VOL. III.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, [redacted] 1921

Term No. [redacted] 257

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28164.)

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 2839

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 11, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant
MR. CHAMBERS, of Counsel for defendant Newton
MR. HAYWARD (by JOHN H. CLARK, Jr.), 2840
of Counsel for Public Service Commission
MR. O'BRIEN, of Counsel for defendant Swann.

The Master: Mr. O'Brien, do you want to ask any more questions of Mr. Alrich?

Mr. O'Brien: Yes, your Honor, I have a few little things to ask him.

The Master: Mr. Alrich is recalled for further cross-examination, by permission of 2841
the Master.

Mr. Ransom: The redirect-examination being held in abeyance?

The Master: Yes.

HERBERT W. ALRICH, recalled.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. When were you in the 99th street station last?

A. Last Saturday.

2842 Q. Prior to your testimony, when were you there?

A. Why, shortly before. I have been at 99th street frequently in the past six months.

Q. Frequently?

A. Yes.

Q. Why did you go there last Saturday?

A. I went there with counsel.

Q. For what purpose?

A. Because they asked me to go along with them. The purposes were there.

Q. Well, I am asking you what they were.

A. I don't know what thoughts were in their
2843 minds. They asked me to go and I went with them.

Q. What did you do when you went there?

A. Looked around the station.

Q. What part of the station did you look around?

A. Why, I should say practically all of the station.

Q. To refresh your memory?

A. Well, it might have refreshed my memory, but I am very familiar with the plan, you know.

Q. You are?

A. Yes.

Q. Did you examine the holder there that you
2844 said contained oil when you testified here?

A. I did.

Q. You said it was used for storing oil?

A. I did.

Q. Does it contain oil now?

A. It does.

Q. Did it contain oil on the visit that you last made before you testified?

A. It did.

Q. How much oil? 2845

A. O I don't know how many thousand gallons, but it is a very large quantity of oil that is in there. That water that you saw is for the protection of the oil.

Q. What are you talking about now, Alrich?

The Master: How do you know he saw it; how do you know he saw water there?

A. It is quite evident to me that he has been looking at the holder.

Mr. O'Brien: Well, the criticism lies just the same, your Honor.

The Master: One moment; don't you see you haven't any right to anticipate anything? Just answer the questions and we will save time. Go on to the next question, Mr. O'Brien. 2846

By Mr. O'Brien:

Q. What holder are you talking about?

A. The holder in which there is oil stored in the tank.

By the Master:

Q. Where is it located?

A. On the north side of 98th street, being the third holder from First avenue toward the east.

The Master: Is that the one you mean, Mr. O'Brien? 2847

Mr. O'Brien: That is the one I mean, your Honor.

By Mr. O'Brien:

Q. Now, how much oil is stored there, if you know?

A. I don't know, other than that there are many thousands of gallons.

Q. How do you know that?

2848 A. By the level at which the water stood in the outer annulus of the tank.

Q. How long has that been used for that purpose?

A. For the storage of oil?

Q. Yes.

A. Back since 1917, about the time the war started; that is, about the time America entered the war.

Q. How do they put the oil in there?

A. Through a pipe?

Mr. O'Brien: I am going to ask that this witness be censured for being so fresh. I am
2849 going to protest against his answers. I want a sensible answer, and I want this business dropped?

The Master: What is the point?

Mr. O'Brien: The point is this, I ask him how is the oil put in there ——

The Master: You asked him how the oil was put in there, and he said by a pipe. That is a perfectly reasonable answer, it seems to me.

The Witness: There is another way it could be put in.

The Master: He says there is another way in
2850 which it could be put in. I do not think his answer is fresh.

Mr. O'Brien: It is quite plain the witness wants to continue the time-eating policy that he has indulged in on the stand, and I am going to protest against it. The point is this, that I asked him a question that was quite clear, a sensible question, and I don't want

to be compelled to ask him ten times about 2851
something that could be answered in one.

The Master: But the trouble is this: I have seen it a number of times here in this case, up to this time. You think the question is perfectly clear, you have some particular thing in mind, but you are practically asking the witness to guess just what is in your mind. I don't really know just what is in your mind. I am frank to say that the witness may be able to guess, but the answer to your question seemed to be a reasonable one.

Mr. O'Brien: The witness knows that the oil 2852
would go there through a pipe under any conditions.

The Master: He says no.

Q. How is the oil put in there?

A. Through a pipe.

Q. From where?

A. From the bulkhead.

Q. Has it any connection with any other holders by pipes or any other tanks?

A. It has a connection with other tanks, oil storage tanks.

Q. Is it connected by pipes with the tanks that 2853
are located underground in the other side of the yard?

A. It is.

Q. Is it supplied by oil from those tanks?

A. No.

Q. What is the connection for?

A. To put the oil in from the bulkhead. In other words, the oil——

2854 Q. Why is it connected with the other tanks by pipes?

A. The pumping line is a line common to the tanks on the 99th street side and also to the holder tank. It is a common pumping line.

Q. And the oil is pumped you say from the bulkhead?

A. From the bulkhead, yes. It comes in barges.

Q. Is that an underground pipe?

A. It is.

Q. Does it run under the Marginal Street?

A. It does.

Q. Which is leased by the company?

2855 Mr. O'Brien: I move to have that part of the answer stricken out.

The Master: The motion is granted.

Q. How many people use the office or work in the office there on the 99th street station?

A. Why, I do not know just how large an office staff they normally have there.

Q. How many did you see there on the occasion of the frequent visits you say you made in the last six months?

A. I did not count the men in the office on the occasion of these visits. That is a matter that does

2856 not——

Mr. O'Brien: I move to strike the answer out as not responsive.

Mr. Ransom: I think that is responsive.

The Master: Motion denied.

Mr. O'Brien: I did not ask him whether he counted them. I press the question.

Q. How many men were working in the office at the time, on the occasion of your visits during the past six months?

Mr. Ransom: It does not appear that the wit- 2857
ness knows that. He has not been asked whether he does, and he said he did not count them.

The Master: Let him answer as best he can.

A. I did not observe. I do not know, I do not remember.

Q. Was there anybody there besides Mr. Decastro and his clerk?

A. Yes, I can remember one or two other men being there.

Q. The ground floor is used for a lunch room.

A. And storage.

Q. Where does it store? 2858

A. I don't recall the particular details of what is stored there.

Q. Anything more than a couple of pairs of rubber boots?

A. There are some rubber boots and some storm coats and clothing of that character, necessary for the superintendent and his staff. There is miscellaneous storage there.

Mr. O'Brien: I move to strike out the latter part of the answer beginning with "necessary for the superintendent".

The Master: No, I will let it stand. 2859

Mr. O'Brien: Exception.

Q. You did notice the character of the wearing apparel when you visited the place?

The Master: You may answer.

A. I do not understand what you mean by wearing apparel.

Q. You do not understand what I mean? You just

2860 said there were some rubber coats there, didn't you?

A. I recall that he stored his rubber coats and boots there. I borrowed them from him and put them on in that place.

Q. How many rooms are on the second floor of that little office building?

A. Five.

Q. And they are used for what purpose?

A. The westerly room is the superintendent's office, the room east of that along 99th street is the clerks' office. The room east of that is the wash room and toilet. Then along the south side of the
2861 building, the room just east of the superintendent's office, is the laboratory, and the room east of that occupying the southeast corner of the building is the assistant superintendent's office.

Q. Who is the assistant superintendent?

A. Mr. Burkhardt.

Q. Mr. who?

A. Burkhardt.

Q. Who is the superintendent?

A. Mr. Decastro.

Q. Does he call himself superintendent?

A. I do not know what he calls himself. That
2862 is his initial title, superintendent of the 99th street station.

Q. Did you see Mr. Burkhardt there on the occasion of your visits?

A. I have, yes.

Q. Was he there Saturday?

A. I do not know, I did not see him. He was not in his office and I did not encounter him, and I did not inquire whether he was on the premises.

Q. Did you draw the diagram that is on the table 2863
in the superintendent's office, showing the layout of mains?

A. I did not.

Q. Do you know who drew it?

A. I do not.

Q. Was it drawn in your office?

A. It was not drawn in my office.

Q. Do you know in what office it was drawn?

A. I do not.

Q. Have you ever seen it?

A. I have.

Q. Is it a fair representation of the main system 2864
in that part of the city of the complainant?

A. As far as I have knowledge of those connections they are represented there. There are other connections shown with which I am not familiar.

Q. What transit main, if any, is in 171st street?

A. I am not familiar with that territory down there, around 171st street.

Q. Are you familiar with the connections between this plant and the territory to the north by transit mains?

A. To some extent, because I saw them put in.

Q. Only because you saw them put in?

A. Yes. 2865

The Master: Do not answer that.

Q. Only through that source?

The Master: All right, answer.

A. That is all.

Q. What are they?

A. Well, I saw the 48 inch transit mains that I have described before as running up into the Bronx, and there is also a 36 inch transit main, that is in

2866 First avenue, and then there is a line that runs west through 111th street to 132nd street. Then there is——

Q. That is a 36-inch main?

A. Going west through 111th street, yes, as I remember it, a 36-inch line. Then there is a standard line. It runs east in 111th street, and up First avenue. After it turns up First avenue I do not know its route.

Q. There is a 30 inch main running north to the 48 inch transit at 116th street and Pleasant avenue, isn't there?

2867 A. A 30 inch, I think there is. I think it runs out of the middle of the building, or about the middle of the building, then turns east in 111th street and up First avenue; then after that it is lost to me; I do not know its route.

Q. Now, there is a 36—how big a main is there in First Avenue?

A. There is both the 36 inch transit and the 48 inch transit.

Q. Running through First avenue?

A. First avenue.

Q. For what distance?

The Master: He has already said he does

2868 not know. He loses it once it turns up First avenue. I have been letting you ask these questions, Mr. O'Brien, because I thought you would be through with it quickly, but I do not think it is in line with the direct-examination.

The Witness: That other transit may be a 30 inch. It is either a 30 or 36 inch.

The Master: I do not think this witness'

testimony is at all reliable on this main con- 2869
struction.

Mr. O'Brien: Your Honor, we have a statement from the counsel when the witness was put on the stand, or during his examination as to how far his testimony was going to be offered.

The Master: But you did have a statement.

Mr. O'Brien: Well, we did.

The Master: Yes, you did.

Mr. O'Brien: Let me tell you the position I am in. If his testimony is offered to verify the fact that they are in possession of certain 2870
property and using it——

The Master: That is all I take it for.

Mr. O'Brien: Well, there are a lot of discrepancies in his dimensions and certain things about the property.

The Master: Well, cross-examine him on those.

Mr. O'Brien: If his testimony was only designed to give us, say a bird's eye view or cursory statement of the property they own, of course, we could dismiss the witness and not bother much with cross-examination.

The Master: That is about all it amounts 2871
to, Mr. O'Brien.

Mr. Ransom: Look at the position. They have gone ahead and examined this witness, who I repeatedly stated was not called for those purposes. They have examined him on the question of transit and distribution mains, when he knew nothing about the distribution mains in the older part of the city, and com-

2872 paratively little about the transit mains in the newer part of the city. That is the sort of thing I am complaining of.

The Master: You may assume, Mr. O'Brien, that as far as this witness' testimony is concerned, and so far as the Master is concerned, his testimony bears upon only one general situation; that is all that is left in my mind after all of these days of direct examination and cross-examination, a picture of certain localities with certain gas structures on them, generally of the dimensions indicated,—I am not
2873 particular about inches or feet—generally speaking some of them are now being used for gas purposes and some of them are not now actually being used for those purposes. That is all I have taken this witness's testimony for.

Mr. Ransom: Except that the defendants have made him their own witness on many things outside of the scope of the direct examination.

The Master: I do not think that anything they have brought out is especially important. The one thing that is in my mind, and the only thing I have this witness's testimony in mind
2874 for, and when I come to a conclusion of this case that is all that will be left in my mind—is the general picture that they have a lot of properties gas works are built on and some are not now actually used.

Mr. Ransom: The complainant feels that it is entitled to the full benefit of any of these matters that have been brought out by the defendant.

The Master: Surely, no question about that. 2875

Mr. Ransom: They have carried the testimony of this witness not only much further than I would have intended, but also much further than I could have done.

The Master: If there is anything he has testified to as new matter on this cross that is of any advantage to you, of course you have the benefit of it, but I would not waste any time on those things.

Mr. Ransom: On this matter of the transit mains, they are going to have full opportunity to get information on those and they want this—— 2876

The Master: Judge Ransom, we have had this back and forth for 8 days. Now I know that every time something like this comes up I must assume that you will make a statement of that sort, but every time Mr. O'Brien——

Mr. O'Brien: Your Honor cannot assume what I am going to say now on this point.

The Master: Please don't say it.

Mr. O'Brien: That everywhere you go there is a little hole in the door and you have to give a mystic countersign to get in, and the men are afraid to say what their names are. 2877

The Master: Let us go on and take proof.

Mr. O'Brien: They are afraid to say what their names are, and it is not the frank disclosure of the plant we expect to have from them.

The Master: Maybe you will get it before you get through.

Mr. O'Brien: I will get it. I am going to put every one of their superintendents on the stand

2878 and bring that out. We go there and are told nothing, we ask a question about a building or piece of property, nothing. The men are afraid to say what their names are.

The Master: Don't you see that if I let Mr. Ransom say so he will say that is not correct?

Mr. O'Brien: I say it here, and if it is not correct he can say so. We are just beginning this case.

The Master: All right, go ahead.

Q. Now, there is a building over near the oil tanks that—I don't know what you call that, do you call it the exhauster building?

2879 A. Which station do you mean, Mr. O'Brien?

Q. 99th Street station.

A. There is a building on the south side of 99th Street about the middle of the block, just west of the oil tanks and tar separator.

Q. Yes, and that building is not in use at the present time, is it?

A. The building is in use.

Q. For what purpose?

A. It contains an exhauster and engine and the connections connected with the transit line.

Q. Wait a minute, bear in mind my question and

2880 think it over for a minute. Do you mean to tell us now that that machinery is in use?

A. That machinery is in use?

Q. What do you mean in use—simply connected up and usable?

A. Available.

Q. Available is what you mean?

A. It is good working machinery, operating machinery.

The Master: Well, what Mr. O'Brien means is it actually working now?

The Witness: I don't know the occasions 2881
when that comes into action on the transit line on which it is connected. It is an action beyond my sphere of knowledge.

Q. It was not actually used on Saturday, was it, on the occasion of your visit there?

A. It was not running when I was there; neither was the 111th Street exhausters running when I was there, at that minute.

Q. Did you ever see it there running in the last six months?

A. This is—Saturday was the first time I had been in that building in six months or more.

Q. So that when you testified about that building 2882
on your direct testimony, you were not speaking from a recent visit within the building?

A. I was speaking from my knowledge of the building, which covers some years.

Mr. O'Brien: I will ask for a direct answer, your Honor.

The Master: I think I will let the answer stand. As I understand the witness' testimony, he says there is a building there with certain machinery in it available for use, that he does not know how often it is used. Now, that is about all we can get out of him, I guess. 2883

Q. Were both the meters in use, actual use, when you were there last?

A. At 99th Street?

Q. Yes.

A. Yes, they were both in use. All of the meters there were in use.

The Master: You mean by that, measuring gas, actually measuring gas?

2884 The Witness: As to whether at the moment they had any of them by-passed, I don't know.

The Master: What do you mean by-passed?

The Witness: If the make of a plant at any time is far below the capacity of the meters, it would not be surprising if the superintendent would by-pass all of the meters other than enough to measure the gas being made.

Q. Was the proportional meter in use at any time you were there in the past six months?

The Master: He said he was not there in six months.

2885 The Witness: No, he is speaking about another building.

Q. I am talking now about the meter house, your Honor.

A. Was the meter in use? Yes, it was in use.

Q. Proportional meter? A. Yes, all of them were in use.

The Master: Let us understand it here: Mr. O'Brien is trying to get at whether they were actually measuring gas when you were there.

The Witness: That I do not recall. I have seen all of the meters in my time and measuring gas. I do not associate particular visits

2886 with watching the index of particular meters.

The Master: Your answer is you don't know?

The Witness: I don't remember, which is a different thing.

Q. Are there more than one man employed in the meter house?

A. There is one man stationed there all of the

time, and much of the time there is another man 2887
there.

Q. Do you know what his name is?

A. The man in the meter house—there are several men, different shifts. I don't know which one you saw.

The Master: He didn't ask you that. What is the name of the man that is regularly there on the day shift?

The Witness: His last name is Weber, as I believe.

The Master: What is the name of another man who is on some of these shifts?

The Witness: I don't recall that. 2888

The Master: Any other man that you recall?

The Witness: No. I know them by appearance.

The Master: Is Weber the only name you can recall of any of the men on that work?

The Witness: Yes, sir.

Q. Weber is in charge of the meter house?

The Master: He said on one of the shifts.

Q. On one of the shifts?

A. Yes, sir.

Q. He answers the telephone?

A. He does. 2889

Q. Takes care of the switchboards?

A. Yes.

Q. Looks after the gate through which people come and go?

A. Well, I don't know to what extent he is particularly assigned to that. I know he frequently does. I am not able to say that that is a special duty of his.

2890 Q. The gate is right near that building?

The Master: I don't think that has much to do with the general complication and construction, what this man's duties are.

Mr. O'Brien: All right, your Honor.

Q. The building, the engine house building, is quite an old structure, is it not?

A. You mean the building where the engines and exhausters are?

Q. Yes, sir.

A. Why, there is hardly anything inside of that building that I have not seen put there.

The Master: How about the walls?

2891 The Witness: The walls were there when I entered the employ of the company.

The Master: I imagine that is what you had reference to, Mr. O'Brien?

Mr. O'Brien: Yes.

The Witness: The whole inside has been torn out and——

Mr. O'Brien: (Interrupting): I did not ask the witness about the inside, your Honor. The witness need not spar with me.

The Master: I am trying to keep this thing straight. I thought I had what you wanted.

2892 The building is an old building, the shell of it.

Mr. O'Brien: That is what I asked him.

The Master: Is that correct?

The Witness: Yes.

Q. I was not talking about the engine?

A. The shell of the building was there when I entered the employ of the company. Back of that I cannot go.

Q. That has pilasters too?

A. Four inch pilasters; not buttressed to receive 2893
coal pressure.

Q. Do you know how long these tanks have been in the ground, the oil tanks?

A. They were there when I entered the employ of the company.

Q. There is an engine in the yard, disconnected and out of use—not an engine, but a piece of gas-making machinery?

By the Master:

Q. Did you notice that?

A. Standing by the oil tanks?

By Mr. O'Brien:

Q. No, standing outside the generator house. 2894

A. On the west side?

Q. Yes.

A. Why, that is not an engine. It is an experimental waste heat boiler, which was an experiment we conducted there several years ago.

Q. A waste heat boiler?

A. A waste heat boiler, yes.

Q. How long ago was that experiment conducted?

The Master: He answered that, some years ago.

Q. What year was it that it was conducted in?

The Master: You need not answer that. It 2895
is not cross-examination as to any matter brought out on direct.

Mr. O'Brien: Your Honor, here is a huge piece of machinery about 30 feet high——

The Master: He did not include it in his description of property.

Mr. Ransom: It is not in the description of property.

2896 Mr. O'Brien: Are we then to assume that you are only going to claim as a base the things that have been described by the witness?

The Master: In view of what you say, I think I will allow the question. There may be some doubt about that.

By the Master:

Q. How about this machine, how long ago was the experiment?

A. I think it was about 1910; it was along from 1910 to 1912.

By Mr. O'Brien:

Q. Then you call that several years? That is what
2897 you mean by several years?

A. Well, several is more than two, and eight is more than two, and five is more than two.

The Master: One moment; you can draw your own inferences from his testimony.

By the Master:

Q. So that that machine has been discarded for some eight or nine years?

A. It never was anything more than an experiment.

Q. It has been discarded ever since it was tried?

A. It was not discarded, because it never was a
2898 part of the operating apparatus of the plant.

By Mr. O'Brien:

Q. How long have the flower beds been in the yard there?

A. Those flowers, they bloom periodically as the men who work there chose to bring them from their homes and plant them.

By the Master:

Q. How many years have they been there?

A. Oh, off and on ever since I have been familiar 2899
with the plant, the men there have habitually brought flowers there and planted them.

Q. How large a space is used for that?

A. Oh, it is unimportant, the scraggly lot——

Q. How large a space is there?

A. They are not encroaching on our building.

Q. I didn't ask you that. How large a space is occupied; 10 feet square or 40 feet square or 100 feet square?

A. Well, there are about four or five patches of scraggly plants. It looks to me as if they need an oxygen tank.

The Master: He has given his testimony; 2900
go on with the next question.

By Mr. O'Brien:

Q. The holders were how full, how much full were they when you were there last?

The Master: Which holders?

Mr. O'Brien: I am asking about the gas holders.

The Master: The gas holders on 9th street?

Mr. O'Brien: Yes.

A. The relief holder of course was going up and down with the fluctuation of the make. You can't rate a relief holder, because it goes up and 2901
down——

Mr. O'Brien: I move to strike out the answer beginning with the words, "you can't rate".

The Master: Let us see if we cannot get this definitely. You have reference to what time, Mr. O'Brien?

Mr. O'Brien: Why, his visit on Saturday. I asked him how full they were.

2902 By the Master:

Q. On last Saturday you were there at what time?

A. About half past eleven in the morning.

Q. At that time did you observe the relief holder?

A. I do not recall particularly observing it. I have a faint impression that it was about half inflated.

Q. That would mean about half full?

A. About half full. Of course it is going up and down.

Q. Well, it doesn't go up and down so fast that
2903 you couldn't say that at 11 o'clock it was about half full?

A. Why, if they put two machines on at that time, if two machines started a run that holder would jump five feet in short order.

Q. You would notice a jump like that?

A. You surely would.

Q. Did you notice any jump like that?

A. I am too accustomed to going around gas works to have trifling things of that kind cling in my mind.

Q. According to your best recollection as to the
2904 appearance of the gas holder on Saturday morning, you wouldn't say that it was about half full?

A. That is my best recollection.

By Mr. O'Brien:

Q. Was it above 45? There is a big signal out in the yard indicating how full the holder is?

A. Yes. I don't remember what the index showed.

Q. Did you see the index that stands up there, black and white, in the middle of the yard?

A. Yes. 2905

Q. You saw the index?

By the Master:

Q. Did you look at the index?

A. No.

Q. Do you know what it read?

A. No.

Q. Now, the other holders, how full were they?

A. The No. 1 holder was in one section——

Q. That means nothing to me. What does that mean, that it was one-third full or one-half full or one-quarter full?

A. It was less than one-third full. 2906

By Mr. O'Brien:

Q. How many feet high was that on Saturday when you were there?

A. I should say probably about 15 feet.

Q. And the relief holder was about 25 feet high?

A. No, I would say that the relief holder was about 12 to 15 feet high.

Q. How many generating machines were in use?

The Master: Let us get the holders out of the way first.

A. The second holder, that is the second holder from Second avenue, was on all three sections. I particularly observed that. 2907

By the Master:

Q. That means what?

A. That it contained practically a full quantity of gas.

Q. The next holder?

A. The next holder had the full quantity of oil as before described.

2908 By Mr. O'Brien:

Q. Well, it was practically level with the ground?

A. Yes.

By the Master:

Q. Are there any other holders there?

A. That is all.

By Mr. O'Brien:

Q. Were all the other gas tanks in use—oil tanks, I mean.

A. You mean the underground oil tanks?

Q. Yes.

A. I don't know how their stock stands. All of
2909 those are the oil storage tanks of the plant.

Q. You did not examine to see what was in there last week?

A. I did not.

Q. You did not examine prior to your testimony as given here on direct, to see how much oil was in them?

A. No; that is a matter belonging to the operating department.

Q. Did you?

A. No, I do not check up the oil in stock at the different plants. That does not belong to my business.

2910 Mr. O'Brien: I move to strike that out. These volunteer remarks going into the printed record here——

The Master: I will let it stand. I am trying to stop it as much as I can.

Q. How many generating machines have been used there in the case of your visit during the past six months?

A. The whole four.

Q. The whole four were not going Saturday, were 2911
they?

A. No. 1 is being recheckered.

Q. I asked you a question, and I want an answer.

A. Well, that one was going, it was just as important to the gas making to rechecker it——

Mr. O'Brien: Your Honor, there is an illustration; you couldn't get a better one, of the attitude of the witness. He knows what I mean.

The Master: So do I.

By the Master:

Q. How many generators are there?

A. Four. 2912

Q. What are the generators for?

A. For generating water gas.

Q. Were they all generating water gas on Saturday?

A. They were not.

Q. How many of them were generating water gas on Saturday?

A. Two, as I recall.

Q. What were the other two doing?

A. One was being recheckered and I think one was being clinkered at the time.

Q. Did you see somebody working on that one— 2913
did you see it being clinkered?

A. That is my recollection. I think it was the second machine from the north. I was not giving particular attention to the details of operation.

Q. You were not concerned then whether it was in use, or whether it was being clinkered or not?

A. I know they were making a run on the third machine from the north, and I am pretty sure they were on the north machine.

2914 Q. Did you spend much time in the generator house?

A. No, it was pretty warm, and I didn't want to stay there any longer than I could help.

The Master: All you have to do is to say you were not there long.

Q. Your answer is no?

A. I didn't stay very long. I was in there three times during the visit, in the generator house.

Q. You mean during Saturday's visit?

A. Yes, I went in there three times.

Q. Why did you go back the second and third time?

2915 A. Because counsel did.

Q. Who were the counsel that were with you?

A. Judge Ransom and Mr. Vilas.

Q. You followed them?

A. I did; I was walking right behind Judge Ransom.

Q. Did they direct you to go?

A. Well, they asked me to go. I don't recall whether I regarded it as a command or a request?

Q. How many men were working there at the generator machines when you were there?

A. I don't remember.

2916 Q. Your memory does not record who were there on Saturday?

A. In the generator house, working on the machines?

Q. Yes.

A. No; I didn't notice that.

Q. Were there more than three?

A. I am under the impression there were more than three. I think there were three men downstairs and four upstairs.

Q. How many were upstairs? 2917

A. I remember two.

Q. Do you know Mr. Barry?

A. I did know a Mr. Barry, a Thomas Barry. A large man?

Q. Mr. Barry, a gas maker.

A. I did know a Mr. Barry; I don't know whether he is at 99th street or not.

Q. Did you see Mr. Barry there Saturday?

A. I did not.

Q. Did you see more than three men working on the upper floor there Saturday?

A. No, I think there were two up there at that time. 2918

Q. How many men did you see bringing in coke?

A. I didn't notice that at all.

Q. Were they bringing in coke on Saturday?

A. I don't know; I didn't watch.

Q. You didn't see any men at all, as you recall it?

A. I don't remember whether there were any men bringing coke or coal in to the generator house or not.

Q. Were there any men carting coke over from across the street into the yard?

A. At just the time I was there, I should say no, because the gate on the east side of the avenue was closed, which would indicate that they were not. 2919

Q. How long were you there altogether?

A. On Saturday?

Q. Yes.

A. Doubtless an hour.

Q. Did you go across the Marginal street on Saturday?

A. Down by the bulkhead—yes.

Q. What did you do down there?

2920 A. Looked around.

Q. Did you make any measurements?

A. I did not.

Q. Are you going to correct your testimony by reason of your visit there on Saturday in any respect?

A. I don't think of any testimony that I have a desire to change regarding that property.

Q. Is any portion of that property loaned or leased to anybody else than the complainant?

A. No portion of the Consolidated Gas Company's property in that block, that is, between 98th and 99th streets, east of the avenue, is leased to
2921 anyone else.

By the Master:

Q. That is shown on Exhibit 178 in pink?

A. Yes, sheet No. 11.

By Mr. O'Brien:

Q. I call your attention to sheet No. 11, particularly block 1692, and ask you if you take the position now that all of that block as there described is being used by the complainant?

A. Every square inch of it. The property occupied by the Scranton & Wyoming Coal Co. does not belong to the Consolidated Gas Company.

2922 Q. Do you mean to infer by your answer that part of that block No. 1692 is used by the Scranton Company? A. A portion of the Marginal street lying east of our property is leased from the City of New York by the Scranton & Wyoming Coal Company.

Q. Lying east of your property?

A. Yes, sir.

Q. Mark that on this sheet here. (Showing witness sheet 11 of Exhibit 178.)

A. At Mr. O'Brien's request I sketch on his copy 2923
of sheet No. 11 the bulkhead along the east side of the Marginal street between 98th and 99th Streets, and I indicate north of the centre line of the block a shaded area which is leased by the Scranton & Wyoming Coal Company. The corresponding unshaded area to the south of the centre of the block is leased from the City of New York by the Consolidated Gas Company.

Q. You say that there is no part of block 1692 that is occupied by some one else than the complainant?

A. That is correct. No part of block 1692.

Q. Did you make a survey of the part that is 2924
covered by coal there?

A. I made an observation of it.

Q. Have you made a survey of it?

A. Personally I did not make a survey; I am familiar with the fact.

Mr. O'Brien: Your Honor, I move to strike out, "I am familiar with the fact."

The Master: Well, I will strike it out.

Q. Have you ever made a survey of this block?

A. Myself, taking the transit?

Q. Yes.

A. No; I supervised one. 2925

Mr. O'Brien: I move to strike that out.

The Master: Oh, I will let it stand.

Q. When you say you supervised a survey, what do you refer to?

A. I refer to the circumstances at the time the Scranton & Wyoming Coal Company leased that from the City. We had previous to that leased the entire property up to 99th street, and when the Dock Department took that away from us and

2926 leased it to the other parties, we had George C. Hollerith, of the Title Guarantee & Trust Company, re-establish that line along there, to make sure that our property was not encroached upon.

Q. Mr. Alrich, there isn't any fence separating the space occupied by the Scranton company from the complainant's lot, is there?

A. Oh, yes there is.

Q. You are sure of that, are you?

A. Yes, sir.

Q. There is a fence on both sides?

A. Yes, sir.

Q. On the west side particularly?

2927 A. Yes, sir; there is.

Q. You paid particular attention to that Saturday, did you?

A. I did.

Q. Why did you visit this particular block No. 1692 on Saturday?

A. Because I was following Judge Ransom.

Q. What did you do there?

A. We looked around.

Q. Did you make any measurements?

A. I have answered already that I did not.

Q. Did you make any computation of the un-

2928 occupied space there?

A. There not being any, I did not.

Mr. O'Brien: Your Honor, I am going to move to strike that out.

The Master: It may stand.

Q. You mean to say that the whole of block 1692 was occupied?

A. That is the coal storage. The coal supply goes up and down.

Q. You are confusing availability with actual 2929
use, aren't you in these two answers?

By the Master:

Q. Is there any coal there now?

A. A very large quantity of coal.

Q. On block 1692?

A. Yes, but not the full possible capacity. You see they are constantly drawing out. It is like the flour in the domestic barrel, the quantity must vary.

By Mr. O'Brien:

Q. Just where are they drawing it out?

A. The appearances were——

Q. Wait a minute. Where were they drawing 2930
the coal out?

A. There were no carts taking coal while I was there, but the appearances were that they were drawing down from where the steam shovels were.

Q. The steam shovel takes the coal out of the barges, doesn't it?

A. It does two things. It reclaims as well as unloads. That is the advantage of a steam shovel.

Q. What was it doing when you were there on Saturday?

A. When I was there on Saturday the man was doubtless at his lunch; it was not working. 2931

Q. Is your memory clear on what the steam shovel was doing on the occasion of your other visit to block 1692?

A. Among my numerous visits I have seen it perform in numerous functions, unloading coal from the barge, and also reclaiming. I remember seeing both distinctly.

Q. How many men were on that ground there Saturday?

2932 A. Well, Judge Ransom, that is one, Mr. Vilas is two, I am three——

The Master: Well, now, wait a minute.

Mr. O'Brien: You are three.

The Master: What Mr. O'Brien asked for is men working for the Consolidated Gas handling coal. Were there anybody there?

The Witness: I do not recall anybody but a watchman down there, one man walking around.

Q. Was that after 12 o'clock, was it?

A. It probably was after 12 o'clock when we got down there.

2933 The Master: I won't take any more on that, Mr. O'Brien.

Q. Did you see any wagons on the block across the street from 1692 of the National Coal & Coke Company?

The Master: I won't allow that. I am not interested in any blocks across the road.

Mr. O'Brien: I mean the plaintiff's property.

The Master: Oh, 1670?

Mr. O'Brien: Yes.

The Master: I will allow that.

2934 The Witness: In Block 1670 there was no carts of the National Coal & Coke Company or any other company, of Block 1670, when I was there Saturday.

Q. Did you ever see them coming in carting coal on the occasion of your visits?

A. A cart of the National Coal & Coke Company?

Q. Yes, sir.

A. I never did.

Q. Is it unusual for them to do that? 2935

The Master: He said he never saw it. Now, I won't allow that.

The Witness: As the station has its own carts, I would regard it so.

Q. Do you know that coal is brought from 111th Street down there?

A. I have already testified that they have a reserve pile at 111th Street, right on the corner.

The Master: Yes, and coal is brought down from 111th Street, isn't it?

The Witness: I have seen it brought down.

The Master: Why don't you say so.

Q. You have never seen it brought in the National Coke Company's carts? 2936

Mr. Ransom: How is that material?

The Master: It is not material; I won't allow the question.

Mr. O'Brien: Well, I am keeping right close to the use of this property, your Honor, the use of property, whether it be real estate or implements or wagons or horses.

The Master: I have disallowed the question, because I think it is fully covered.

Q. The building to the east—or rather, there is a boiler house on the ground? 2937

A. The 99th Street station?

Q. Yes.

A. Several boilers in it, there are four.

Q. Four boilers?

A. Four boilers of the Babcock & Wilcox type.

Q. Are you sure they are the Babcock & Wilcox type?

A. Yes, sir.

Q. What makes you think that?

2938 A. My knowledge of an engineer.

Q. Where were those boilers made?

A. Two of them were built by the Altman & Taylor Company, which is now owned by the Babcock & Wilcox Company, and as I recall, the other two were built by them also. It is owned by the Babcock & Wilcox Company.

Q. Babcock & Wilcox's name is not on them, is it?

A. The Altman & Taylor Company's name is on them.

Q. Is on all of them, isn't it?

2939 A. Is on all four, yes, which company, as I said——

Q. Do you recall when they were put in?

A. All four were put in during my time. As I recall two of them were put in shortly after I entered the employ of the company, and the other two about 1904 or 1905.

Q. And they all figured in the old case?

The Master: You need not answer that. He don't know what figured in the old case.

Mr. O'Brien: Oh yes, your Honor. He was in on that case, as I understand the record.

Q. You made maps of the real estate, didn't you?

2940 A. Yes. It did not show the boilers, though.

Q. And you corrected some of those maps this time, didn't you? You corrected your maps which you made in 1906?

Mr. Ransom: I object to the question as quite immaterial.

The Master: I will let him answer if he did.

The Witness: Exhibit 48 of the prior suit was not before me when I made Exhibit 178.

Q. I asked you a question. 2941

The Master: I think it has been answered. I understand the witness to say that he did not correct prior maps. He says the map may not be the same as the other map.

Q. Will you turn to sheet 6 of the exhibit?

A. I have it.

Q. Block 978?

The Master: No, there is no block 978 there.

A. There is no block 978.

The Master: Mr. O'Brien asks about sheet 5.

Q. Where did you get this line, 184 feet?

The Master: Mr. O'Brien referred to the easterly line of lot 6 of Block 978, being the line 184 feet in length. Where did you get that line, is the question? 2942

A. From the city plan.

Q. Did you compare that with the exhibit in the old case?

A. I did not.

Q. Do you know that it is different than the length shown in the old case?

A. I do not know. I did not interest myself in those maps.

The Master: Just answer that you do not know. 2943

Q. Will you refer to the corner of Avenue C and 16th Street?

A. Avenue C and 16th Street? You mean the third sheet?

Q. Yes. Where did you get this line on the south side of East 15th Street? I mean the dimension of 261 feet.

The Master: From Avenue C?

Mr. O'Brien: From Avenue C eastward.

2944 A. From the deeds and from the line as I laid it out at the time of the last conveyance.

Q. You prepared the maps in 1906 for the same property?

A. I did some of the work, yes.

Q. That distance on that map was shown to be 235 feet, was it not?

A. And that was correct at that time.

Q What is the explanation then of this post mortem?

The Master: What do you mean by post mortem?

2945 Mr. O'Brien: He uses that term to note corrections in checking up. That is the term used in the company.

The Master: Well, let us use a term that will be more familiar to us. What is the reason or explanation for the additional area upon 16th Street in 1906?

A. Since the prior suit there has been conveyed to the Consolidated Gas Co. a strip of land 26 feet wide on the south side of 16th Street and 35 feet wide on the north side of 15th Street, which distance 26 feet added to the 235, gives 261 shown by sheet 3.

2946 Q. When was that conveyance made?

A. In 1918, the spring of 1918.

Q. Referring to the boiler house on 99th Street, you have east of that a building used as a lavatory?

A. Outside an extension south of the building.

Q. No, I mean east of the building. Don't you know where the lavatory is?

A. You mean a laboratory?

Q. No, lavatory.

A. Yes, that is east of the boilers, but it is on the 2947
south side of the building in an extension.

Q. Yes.

A. Yes, that is just what I said.

Q. And there are some lockers in there?

A. Yes.

Q. And how many of them were in use on Saturday, if you remember?

A. I did not examine the lockers to see.

Q. Did you examine them on the occasion of any of your visits in the last six months?

Mr. Ransom: I do not see how that is material.

A. I don't remember. That is a small detail. 2948

Q. Very small?

A. Yes.

Q. You have, then, east of that another building?

A. Yes, an extension.

Q. Used for storage?

A. No, the extension of that building lying east of that—do you mean just east of the wash room?

Q. Yes.

A. That has two hydraulic pumps and the hydraulic accumulator.

Q. What is east of that? 2949

A. East of that is the yard. That is a wing, an extension of the boiler house.

Q. What I am calling your attention to is that portion of the building here is used for the storage of small pipe, connections, and so on?

A. Yes, east of the boiler house.

Q. And they have then stuck in the old retorts,

2950 this various material, pipes and fittings and such like things?

A. Some of the arches are unset, and as I previously testified they are storing pipe and fittings in those arches.

Q. That building is about of what dimensions?

A. Why, I don't believe I would even want to guess at that. I have not a dimension plan in front of me.

Q. You were in it Saturday, were you not?

A. I was.

Q. You cannot recall just approximately what the dimensions are?

2951 A. I never undertake to carry the dimensions of all these buildings in my head. There may be some circumstance——

Q. In your head?

A. Yes, I don't remember.

Q. You don't remember them?

A. I do not undertake to, no.

Q. You would not rely on your memory?

A. Unless there is some circumstance that fixes the dimensions of the building in my head I do not undertake to say what it is. It is possible for me to say that that building is doubtless about 60 feet

2952 wide, north and south.

Q. What is the construction of it on the 99th street side of the lot, east of the exhauster house; what is the construction of it?

A. That is a tongued and grooved wooden fence down First avenue to 98th street. The brick fences, as I said, are on the westerly end of the property.

Q. Did you visit the 111th street property Saturday?

A. I did.

The Master: Let me ask you, Mr. O'Brien, 2953
are we through with 99th street?

Mr. O'Brien: Well, there may be some things later on I want to bring out, but I think I am quite finished with that.

The Master: You are jumping around from place to place. I want to see if I can clean up one plant at a time.

Q. Where does Joe Stanek live?

A. Stanek lives on the southeast corner of 99th street and First avenue.

Q. His building covers an area of about 15 by 25 or 30?

A. Yes, a small house. 2954

Q. There are chickens in the yard?

A. I don't know.

Q. A little vegetable garden?

A. I don't know. He has three children; I did not observe the chickens.

Q. You did not observe the chickens?

A. No.

Q. You did not observe the vegetable garden?

A. No. Young Joe is my office boy.

Q. Why did you answer that? Why are you volunteering that information?

A. I thought it might interest you. 2955

The Master: We have had enough of that.

Q. At 111th street you have a pretty large holder?

A. We have two large holders.

Q. What are their sizes again?

A. Five million cubic feet capacity each.

Q. Five million foot holders, comparatively speaking, are among the largest of the company?

2956 A. No, we have two larger than that.

The Master: You have got a ten and a fifteen million foot holder.

Q. Where have you the fifteen.

A. That is the Astoria Light, Heat & Power Company.

Q. That is fifteen?

A. Yes.

The Master: Then there is the Sedgwick avenue holder.

Q. The Sedgwick avenue holder is not the largest in the world, is it?

2957 A. I said steel tank, and the statement still stands.

The Master: We have been through that.

Q. These then rank, or you would call them three large holders, these five million foot holders at 111th street?

The Master: I won't allow that. The next question.

Q. These holders are all within the confines of a city block?

A. They are.

Q. A space between the westerly holder—there is quite a little space on the west side.

2958 A. You mean between the westerly holder and the tenement houses?

Q. Yes.

A. On 110th and 111th?

Q. Yes.

A. It is not very considerable. It is a pretty small space.

Q. Well, there is ten or fifteen feet anyway?

A. Yes, ten or fifteen feet anyway, but it is not much under the circumstances.

Q. May be more? 2959

A. It is not much under the circumstances.

Q. It is covered by a lawn?

A. You cannot prevent the grass from growing.

The Master: Now, Mr. Alrich——

The Witness: Well, there is some grass there.

Q. The space between the holder and the lot line or fence line at the north or south is two or three feet or four feet?

A. Well, the foundation——

The Master: What is the point, Mr. O'Brien, that there is some land that is not being used for gas purposes? 2960

Mr. O'Brien: No, your Honor, not with regard to this question.

The Master: What is the point of these questions?

Mr. O'Brien: Well, we are dealing with the use and usability of property.

The Master: I want to know, because if you are wasting time about some fifteen feet between holders and adjoining tenement houses, I am going to tell you now we are not going into any such line.

Mr. O'Brien: Oh, no. 2961

The Master: Let us not waste any time then.

Mr. O'Brien: I am not going to trifle with the Master. Here we have a five million foot holder, and I want to impress it on the Master's mind.

The Master: I know it.

Mr. O'Brien: They have a five million foot

2962 holder, and they put two of them on a city lot and use them.

Mr. Ransom: Well, the holder is there.

The Master: I do not get your point, Mr. O'Brien.

Mr. O'Brien: When we come to give you in the aggregate all the unused property, your Honor will——

The Master: All that may be argument, but we have a clear picture of the situation. As I understand it, it will be your purpose, here, of course to correct or call attention to any errors in the testimony. Let us get at that.

2963 Q. Then that block, give me the dimensions of that block, and I will make the record complete.

The Master: It speaks for itself.

Mr. Ransom: It is already in the record.

Q. 201 feet 10 inches?

A. Yes.

The Master: I won't allow any more on that, because the record shows the dimensions.

Q. By 475. You have on that line between 110th and 111th these two five million foot holders, and you also have a governor house?

A. In between the holders. Correct.

2964 Q. And that is on the south side of East 111th street?

A. It is.

Q. And then just south of the governor house you have a two-story, approximately 30 feet high, sheet metal building, used as a blacksmith house?

A. No.

Q. A boiler house?

A. It is a boiler house; contains three boilers.

Q. That covers the north half of the middle of the block? 2965

A. Well, it is a building right in the middle of the block. It is about——

Q. How wide is the space between that boiler house and East 110th street? Well, it is easily 100 feet, isn't it, Mr. Alrich?

A. Oh, no, it is less than 100 feet.

The Master: It cannot be easily 100 feet.

The Witness: Somewhat less than a hundred feet.

The Master: It cannot be, Mr. O'Brien.

Mr. O'Brien: This is between the holders, your Honor. 2966

The Witness: Yes.

The Master: Yes, but if that governor house is squarely in the center of the street; the block is only 210 feet.

Mr. O'Brien: The governor house is not more than 40 feet wide.

The Master: Yes, but the witness is correct, that the holder is in the center of the block, and then it cannot be that much.

Q. What would you say, Mr. Alrich, is the distance between the boiler house and the 110th street side of the lot? 2967

A. Why, I would say the distance was about 75 feet from the north side of 110th street to the south side of the boiler house, and I say that without any memorandum or drawing showing it.

By the Master:

Q. And that is a vacant space, in a sense?

A. Yes, it is the open space between the holders.

Q. Well, is there a holder on 110th street too?

A. These two holders occupy the entire block

2968 from one street to the other. One is at the east end and the other at the west end, and in between are these two buildings, crowded in. These are buildings necessary to their operation.

The Master: The question whether they are crowded is something that Mr. O'Brien may not agree to. They are there.

By Mr. O'Brien:

Q. Have you been in that governor house lately?

A. I was there Saturday.

Q. Were you there prior to your giving testimony in this case?

2969 A. I have been in that building many times.

Q. Did you make any notes or take any measurements Saturday?

A. I did not.

Q. What did you do?

A. I walked around in the building.

Q. Just walked around with the counsel and talked?

A. Yes.

Q. How many valves are there in there for the control of mains?

The Master: Haven't we had that?

Mr. O'Brien: No.

2970 A. I do not remember. There is a very large number. There was a day I did know, because I worked on the building of that.

The Master: He has been quite a few seconds telling us nothing. You do not know?

The Witness: I do not remember.

Q. Do you know what mains these valves control?

The Master: I won't allow that question. It is an operating question.

Q. Are all the pieces of machinery in the build- 2971
ing in use?

The Master: Do you mean by that available or actually being used?

Mr. O'Brien: Actually being used.

A. They are.

Q. When you say they are, you do not mean merely available for use?

A. I mean it is a very busy place. It is a very important place.

Q. What makes it important?

The Master: I won't permit that question.

Q. What makes it important—what makes it very 2972
important, this station?

The Master: I won't permit that question.

Mr. O'Brien: Your Honor, we might bring that out while we are on it.

The Master: No.

Mr. O'Brien: He has volunteered the statement.

The Master: That is all I am going to let him state, what he volunteered.

Q. You say it is very important because it con-
trols the distribution of gas throughout the city?

The Master: Don't answer that question.

Mr. O'Brien: Well, does that mean that the 2973
Master does not want any questions about distribution mains or transit mains asked of the witness?

The Master: Correct.

Mr. O'Brien: I take an exception then, to your Honor's ruling.

The Master: No more questions on these lines.

2974 Q. Did you visit this little lot across the street Saturday?

The Master: Across what street?

Mr. O'Brien: 111th Street.

The Witness: Lot No. 18.

Q. Lot 18.

The Master: Block 1683.

The Witness: I did.

Q. Take counsel over there and show him what you call the school, the training school?

A. They did not go in.

Q. You went in and they remained outside?

A. Yes.

2975 The Master: We have spent all the time we are going to spend on the training school and all about the pipes that were buried in the ground and the men that they have there to see how pipes are taken up and put in. We have heard all about that.

Q. Will the witness please mark on the map, on this exhibit——

The Master: Is this the original exhibit?

Mr. Ransom: Yes, that is the original.

The Master: The witness may mark Mr. O'Brien's copy.

2976 Q. Will you mark on sheet 12 of Exhibit 178 and particularly block 1683, lot 18 on the easterly portion of that lot, the part that is taken up with mains and tees and ells?

A. You mean pipe and fittings in storage?

Q. I mean what I say, Mr. Alrich, pipe and mains and fittings on the easterly side of that lot.

The Master: In storage?

Mr. O'Brien: Yes.

The Witness: The portion used for the storage of pipe and fittings would be——

Q. I asked you the portion occupied by pipe now, 2977
by mains and fittings.

A. Yes. Substantially the easterly 80 feet.

Q. Did you count the mains that were there?

A. I did not.

Q. Did you look at them on Saturday?

A. I did.

Q. Would you be surprised if I told you by actual count that there were not more than 25 pieces of mains standing there?

A. 25 pieces of pipe and fittings both, you mean, do you?

Q. I am talking about mains, pieces of mains 2978
now?

A. Well, I am not sure as I understand what you mean by mains.

Q. Well now, you are going to get technical. I mean pipe.

A. Pipe alone, I would not be surprised if you told me that that big 36 inch pipe there was only 25 pieces of it, I would not be surprised, no. If you include fittings——

Q. Yes.

A. If you mean the 25 units to include fittings, I would know you were wrong.

Q. You don't mean to say that there is a space 2979
there 80 feet wide, 80 feet west from the street line on the east taken up by the storage of materials, do you?

A. I mean that it is so occupied.

Q. Do you mean to say that it extends the full length of the tenement house that is there, to more than that?

A. Why, these different groups of fittings pretty

2980 well occupy that 80 feet. The pipe is on the north side.

Q. There is a tenement house on the north of this lot on the street there, isn't there?

A. On First Avenue, yes.

Q. Do you know what the dimensions of that tenement house are?

A. Let me have the map. I can tell you that from the map.

The Master: You mean the lot or the house?

The Witness: That property of the tenement is 100 feet deep back from First Avenue.

2981 Q. I am talking about the house now, not the property.

The Master: How deep is the house?

The Witness: Oh, I don't recall that. He has a back yard there; we sold him the back yard.

Q. You don't recall what the distance of the tenement house is there?

A. No.

Q. On its southerly line?

A. No.

The Master: Mr. O'Brien, I won't permit any further questions on this line, because I

2982 think you have brought out, as well as you can from this witness, the fact that he insists that the lot is generally used for storing pipe for a distance of 80 feet west of the avenue, and you by your questions indicate that he is in error about that.

Mr. O'Brien: Well, we will cross the street your Honor, and I will take up a new line of investigation.

Q. On First avenue, we cross over to block 1704? 2983

A. Yes.

Q. Did you go through the building there on the east side of First avenue on Saturday?

A. You mean the Standard Company's meter shop?

Q. I mean the building on the east side of First avenue.

The Master: You want to have in mind, Mr. O'Brien, that Exhibit 178, sheet 12 in block 1704 does not show that it runs to the east side of First avenue.

Mr. O'Brien: The testimony refers to a 2984
building which is there, your Honor, which is used by the complainant.

Mr. Ransom: There is no such testimony.

Mr. O'Brien: Well, there is a building there at any rate.

The Master: Yes, there is testimony that the Standard Gas Light Company have a building there.

Q. And that building is used in part by the complainant, isn't it, Mr. Alrich?

A. You are referring now to the building of the Standard Gas Light Company, are you?

The Master: Yes. 2985

The Witness: I am trying to find out what building he refers to.

Q. I am referring to the building on the east side of First avenue.

A. The building on the east side of First avenue between 110th and 111th streets is the property of the Standard Gas Light Company, and answering your question, certain space in that building is rented by the Consolidated Gas Company.

2986 Q. How many floors are rented by the complainant?

Mr. Ransom: I object to the question. We are not including that property, we are not claiming any——

The Master: I will sustain the objection.

Mr. O'Brien: Why, your Honor, this is a very important matter.

The Master: Why?

Mr. Ransom: We are not putting that in the rate base.

Mr. O'Brien: It makes no difference whether
2987 you are putting it in, I am putting it in.

The Master: Well, now, gentlemen——

Mr. O'Brien: The fact, your Honor, is this: The witness has already said they are paying money, that they are leasing there certain portions of that building.

The Master: Yes.

Mr. O'Brien: The question of using properties, whether they are on lease or whether they are owned by the company is in this case.

The Master: Yes, but wait a minute——

Mr. Ransom: Wait until we get to expendi-
2988 tures by some witness that knows about it.

The Master: Here is the picture as I have it. The witness is called to testify to the description of certain land and the general description of the buildings thereon, and the alleged use made of them. He is not called to testify as to how much is paid for the rental of the space in other buildings or anything of that kind. Now, it may well be that when they try to prove that they are paying rent for some-

thing, that you will have a ground of cross-ex- 2989
amination, and perhaps objection, but at this time I will sustain the objection and rule out that question.

Mr. Ransom: There are a number of cases where the company rents space.

The Master: Mr. Ransom, you are the man who is most anxious to finish this case, as I understand it?

Mr. Ransom: Yes.

Q. To the east of that building there is a delivery entrance, is there not, where the trucks all come in and deliver their material to the building?

A. There is. 2990

The Master: That is the Standard building?

Mr. O'Brien: Yes.

Q. And that is a space about 50 feet wide on each street is it not?

The Master: One minute. Was that included in the pink space here?

The Witness: It is not.

The Master: Well, then, I won't allow the question. I don't care anything about that Standard building.

Mr. O'Brien: Well, your Honor, I don't know that that has been made clear. Here is a 2991
space——

The Master: (Interrupting) Yes, there is a space there.

Mr. O'Brien: Of 201 feet——

The Master: It is not claimd by the Consolidated Gas Company as being any part of its property for use in gas manufacture.

Q. Well, Mr. Alrich, this lot that you say is

2992 owned by the Standard Gas Company is 201 feet along the avenue, and 107 feet on the side street?

A. It is 201 feet 10 inches on the avenue.

Q. Yes. Now, is any part of that—or rather does that strip of land include all of the space used by these trucks that come in, and deliver there gas appliances and meters and take them out?

The Master: To the Standard Company?

The Witness: To the Standard Company?

The Master: In other words, what Mr. O'Brien is trying to make clear on the record, is that Block 1704 Lot 5 is not used in part for the accommodation of the Standard Company

2993 building?

The Witness: It is not.

The Master: That is your point, isn't it?

Q. Well, do you know what the dimensions of the building are?

A. The building is 107 feet on the street by 201 feet 10 inches on the avenue.

The Master: In other words, does that building run all the way back to your property?

The Witness: It does.

The Master: Well, where does this space that wagons drive through——

2994 The Witness: The building is built with a driveway through from one street to the other, so that the trucks can come in from both streets and back up to a loading platform.

Q. In other words, you call the driveway part of the building?

A. It is in the building, under it. There is large girders that bridge the building across the driveway.

Q. Then, so far as the upper stories are con- 2995
cerned, they are built back to the lot line?

A. Yes, sir.

Q. And then the space where the Standard company wagons are stored in, not where they come in, but where they are stored there, that is all Consolidated Gas Company property?

A. No, the Consolidated wagons have a loading platform in the building on lot 5, and that is where the Consolidated motor trucks are stored and charged. They are electrical appliances.

The Master: You are talking about Standard appliances?

Mr. O'Brien: Yes, I am talking about Stan- 2996
dard appliances.

The Master: Well, now, let me put it my way and try to get it clear on the record. Are any Standard trucks stored on lot 5 of block 1704, that you know of?

The Witness: I have never seen a Standard wagon in the garage building on lot 5. I have observed them several times.

Q. Did you visit it on Saturday?

A. I did.

The Master: Did you see it on Saturday?

The Witness: I did. 2997

Q. Did you go and look at the wagons?

A. I did.

The Master: Were there any Standard wagons on the Consolidated property?

The Witness: There were two standing in the open shed east of the garage, two Standard wagons, and none in the garage.

The Master: What were they doing there?

The Witness: They were standing there.

2998 Q. Well then, there is first off you get——

The Master: One minute,——

Mr. O'Brien: Let me get this right, your Honor.

Q. First there is a building, and there is a delivery space underneath the building of the Standard Gas Company?

A. Yes.

Q. Then to the east of that there is a garage?

A. Of the Consolidated Gas Company.

Q. Of the Consolidated Gas Company?

A. Yes.

Q. And who is in charge of that, Mr. Curry?

2999 A. Yes.

Q. And then to the east of that there is an open space an open shed running south 111 feet almost through the block?

A. Running south from the emergency wagon house.

Q. Yes.

A. On the east side of that driveway.

Q. Yes, almost through the block?

A. Yes.

Q. And in that is stored trucks of various kinds?

A. Yes.

3000 Q. Some of them Consolidated and some of them Standard Gas?

A. As I said, there were two Standard trucks in that open shed on the south line.

Q. And then on the 110th Street of that property, that particular strip, what is there?

A. An annex to the garage.

Q. An annex to the garage used by the complainant company?

A. Yes. 3001

Q. Or by the Standard.

A. Used by the Consolidated.

Q. Or both—any part of it used by the National Coke Co.?

A. I have never seen any wagons of theirs in there.

Q. Now then, to the east of this strip of land you say is occupied by the emergency house and by this open shed in which the trucks are stored, what have we?

A. There is storage in there. In the middle of the block and on the easterly end is the 99th Street 3002 reserve coal storage, and the coke.

Q. Now, the coke is all stored there on the easterly end of the block, but there is a large building there through which the coke is brought in there from the barges, isn't that correct?

A. That is correct.

Q. That building stands up about 50 feet?

A. No, it is higher than that.

Q. It has how many delivery stables or pockets from which the coke comes out to the wagons?

A. I don't remember how many.

Q. You did not count them?

A. I don't remember. I worked on the design of 3003 it, but I do not recall all those details now.

Q. Did you see it Saturday?

A. I did.

Q. And you can't recall what the dimensions are, roughly?

A. I was not fixing those things in my mind.

Q. What were you fixing in your mind, Saturday?

3004 A. Why, I was going around with Judge Ransom.

The Master: Did you fix anything in your mind?

The Witness: No, nothing particularly.

Q. Did you make any notes of your visit to refresh your memory?

A. I did not.

Q. Could you tell us what space is occupied by the National Coke Company office?

A. You mean the brick building on the north side?

3005 Q. I mean the brick building, you know what I mean, Mr. Alrich?

The Master: So do I know, and it has been asked several times, and I won't permit any more questions on it.

Mr. O'Brien: Now, I want to ask him—I will withdraw the question, your Honor, then. You know I have got to overlap some of his testimony.

Q. There is an open space between the building into which the coke is drawn from the barges of the National Coke Company and the storage space for trucks on the west—there is an open space

3006 there, isn't there?

A. Barges of the National Coke Company.

Q. Yes. Does that question confuse you?

A. Yes. It starts with a statement about the barges of the National Coke Company. I don't see what you are trying to get at.

Q. You don't see it?

A. No.

Q. Your mind does not grasp that question? 3007

The Master: Don't answer that question.

Mr. O'Brien: Well, your Honor, I insist on the question.

The Master: If he says he doesn't understand the question, try to make him understand it, that is all.

Mr. O'Brien: Well, it is hard for me to believe he does grasp it, your Honor.

The Master: Well, it is not so hard for me, because I don't grasp it.

Q. This lot runs out to the water's edge?

A. No. Pleasant Avenue is between Block 1704 and 1712. 3008

Q. Yes. Well, you have a way of conducting the coke across to the building, that you say you designed?

A. Across overhead, over Pleasant Avenue.

Q. Yes.

A. That is correct.

Q. That is brought in there and thrown into the hoppers and down through into the wagons that are below?

A. Correct.

Q. Now, then, how many coal company wagons were there on Saturday? 3009

A. I don't remember.

Q. About how many?

A. Oh, I don't remember.

Q. About how many were there on the occasion of your visits in the last 6 months?

A. I have never counted them.

The Master: Were there some there on Saturday?

The Witness: There were.

3010 Q. Were there thirty there on Saturday?

A. No, I don't think there was near that many, I should imagine about a half dozen, that is the best recollection I have. You mean carts in action—you mean in action, receiving their coal?

Q. I mean carts, I did not say any kind—of whatever kind, I said how many carts were there when you were there on Saturday?

A. Why, I remember about a half dozen that were in action, and I am under the impression that just north and a little west of the office there were some standing there. I have an indistinct recollection of it however.

3011 Q. Now, the office stands in the open space on 110th street side of the lot?

A. Well, I don't know what you mean by open space. It is west of the driveway.

Q. That leads into the coke pockets?

A. Correct.

Q. Now, what I want you to give me is the dimensions, if you can give them, the width of the distance between the westerly side of that coke pocket and the easterly side of the shed you said stored trucks of the complainant and Standard Gas Company?

3012 A. I have no data before me that would enable me to give that dimension.

Q. Well, isn't it easily a space 250 feet long?

A. Oh, I don't know. I would have to have some drawing or diagram before me before I could give you that.

Q. Your memory is not strong on that?

The Master: You need not answer that.

Q. Would you say it was more than 225 feet, that distance?

A. I am not inclined to make any statement about 3013
it.

The Master: It is a considerable distance, I take it, from what you say, Mr. Alrich?

The Witness: Well, I assume he is taking from the westerly line of Block 1704, he is speaking about the distance the coke office is?

The Master: No, he is talking about a vacant space the driveway went to the building. Is there a vacant space there?

Mr. O'Brien: Well, I am talking about the last building, or rather it is the westerly side of this open shed that we have been speaking about, or the easterly side of that open shed 3014
to the westerly side of the coke pocket.

The Master: Yes, you say there is an open space there?

Mr. O'Brien: There is an open space there.

The Master: And you are trying to locate the size of it?

Mr. O'Brien: Yes, I want him to give me his memory on the distance.

The Witness: I haven't any diagram or dimensions before me.

The Master: Well, is there a considerable space? 3015

The Witness: There is a considerable distance from the east side of the wagon shed to the westerly side of the coke pockets.

The Master: What is that used for?

The Witness: Why, there is coke stored there, and also materials belonging to the Street Department, in the middle third of the block, as I have already said.

3016 Q. Well, you don't mean to call the junk that is thrown around on the 11th street side materials of the company used by the company, do you?

A. Well, there is some scrap iron.

Q. There are bins there and they have scrap iron in them?

A. There is some scrap iron yes.

Q. And there isn't any other material there, is there, in that open space I have asked you to describe?

A. Yes, there is some lumber.

Q. What is the timber there?

A. There is some shoring timbers there.

3017 Q. How many timbers are there?

A. I did not count them.

Q. Well, roughly speaking how many?

A. Well, I haven't an impression even what there is, roughly.

Q. You would not hazard even a guess on that would you?

A. No. Such stuff comes and goes.

Mr. O'Brien: I move to strike that out, your Honor.

The Master: Strike it out.

Mr. O'Brien: I don't want these interpola-

3018 tions in the record when I am examining the witness.

Q. Did you draw the plans for the Standard Gas Company building?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it, because I have allowed so wide a latitude as to the work he does, how much of his time is spent——

Mr. Ransom: Well, your Honor, we object to that——

The Master: I am going to permit this ques- 3019
tion.

The Witness: I designed the foundations and the structural steel work of that building.

Q. Did you spend much time on it?

A. That is relative. Of course took some time. I don't know what you mean by "much".

Q. 6 months, all told?

A. Of my time personally?

Q. Yes.

A. Oh, no.

Q. Large portions of 6 months?

A. Yes, I was devoting some time to it for 6 3020
months.

Q. What year was that?

A. 1911 and 1912.

Q. That is a building some ten or twelve stories high?

A. Ten.

Q. Did you design the structure at 132nd street and Locust avenue that covers the tunnel of the Astoria Company?

A. I did not, other than the roof frame, the structural steel roof frame, yes.

Q. Did you design the elevator well?

A. No. 3021

Q. Or the elevator mechanism?

A. No.

Q. Or the frame work for the elevator?

A. I did some designing, Mr. O'Brien, on the equipment for that tunnel shaft. It was rather disconnected, my work in connection with that, and it is hard for me to make a clear statement. I did have some connection with the designing of the work of that tunnel shaft.

3022 Q. The grill work for covering the well, did you design that?

A. No, I did not design that.

Q. Have you ever been in that house since it was put up?

A. Yes.

Q. Were you there Saturday?

A. I was there, but I didn't go in the building.

Q. You stayed outside?

A. Yes.

Q. Who went in, the counsel?

A. They were not with me.

Q. Why were you there Saturday?

3023 A. I went there to look over the property.

Q. Refreshing your memory?

A. Well, look it over.

Q. Did you go down in the elevator?

A. I did not.

Q. Into the well hole?

A. I did not.

Q. Did you go down the ladder?

A. I did not. I did not go inside the building.

The Master: He says he stayed outside.

Q. Oh, you stayed outside?

A. Yes.

3024 Q. Was the door open?

A. No.

Q. Was there a watchman there?

A. Yes.

Q. Did you talk with him?

A. Yes.

Q. Did you ask him about my visit to the place?

A. I did.

Q. Did he tell you that I was refused permission

to go down and inspect that well hole by Mr. Sper- 3025
ling?

A. He did not.

Q. Did he talk to you about my conversation with Mr. Sperling?

A. He did not.

Q. Who is Mr. Sperling?

A. Mr. Sperling is superintendent of the mechanical department of the Astoria Light, Heat and Power Company.

Q. You said there is a building used for making tests there, a small building, upon that plot?

A. Yes.

Q. Did you ever see any tests being made there? 3026

A. I recall its being done, very distinctly, some months back.

Q. How far back?

A. Probably in November of 1918.

Q. Who were making the tests?

A. Some men from the laboratory department.

Q. What were their names?

A. I don't recall.

Q. From what laboratory department?

A. Of the Consolidated Gas Company.

Q. Is that a department at 15th street?

A. The head chemist is at 130 East 15th street. 3027

Q. Is there a laboratory department at 15th street?

A. No; the engineer chemist is at 15th street.

Q. When you say these tests were being made by some men from the laboratory department, what do you mean?

A. I was referring to the chemist's staff.

Q. From 15th street?

3028 A. Yes.

Q. And you do not recall the names?

A. I do not, no.

Q. Are you pretty well acquainted with the chemist there?

A. No, only the office staff and one or two of the men in the department.

Q. You don't recall their names?

A. No.

Q. They know Alrich, though?

A. Yes, they all know me. That is looking in the other direction, though, Mr. O'Brien. One is looking up, and the other is looking down, you know.

3029 The Master: You need not say which is which.

Q. Well, practically then, on this plot, so far as structures go, there is only this brick structure that is over the well hole where the tunnel terminates, and the building used by the watchman?

A. The testing station.

Q. Well, that is in a room in the building used by the watchman. I am talking about the buildings; there are no other structures on the plot are there, besides the two buildings I have referred to?

A. The testing station and the building on lot

3030 450.

Q. There is one room in that building used for testing, isn't there?

A. Why, there are two rooms, a large room and it has a small annex room.

Q. When were you in that building last?

A. Saturday.

Q. What did you do there?

A. Walked in and looked at the photometer.

Q. The photometer was not working Saturday, 3031
was it?

A. There were no observers there.

Q. Was the machine working?

A. Why, no, it was not working, because there were no observers there.

Q. Well, there was the watchdog outside, also Mr. True?

A. What is that?

Q. The watchdog and Mr. True were outside? You talked with True?

A. I don't know the name of the man that I talked to.

Q. Did you see the little telephone booth out in 3032
the hallway there?

A. I recall there is a telephone on the wall; I have used it on occasions when I have been there.

Q. Did you notice the directions there that were written on the wall?

A. No, I didn't observe that.

Q. You didn't note that paper there?

A. No.

Q. Where there were directions given with regard to the telephone?

A. It don't interest me.

Q. Did you notice it on the wall? 3033

A. No.

Q. Was there any paper there on the wall under the telephone?

A. There probably is. At these different stations there are telephone instructions, but I didn't notice that

Q. Who is Mr. G. E. Woods?

The Master: I don't care who Mr. G. E. Woods is. Now let us stop this. What has

3034 G. E. Woods got to do with the cross-examination as to the physical properties to which this witnes has testified?

Mr. O'Brien: Well, I am trying to find out who uses this property; whether the complainant uses it.

The Master: What property?

Mr. O'Brien: The property at East 132nd Street and Locust avenue.

The Master: I don't think the question as to who Mr. Woods is has anything to do with it.

Mr. O'Brien: Well, I will put the question as briefly as I can to save time; I don't intend
3035 to string it out. I will ask the witness altogether, who these men are, if they are employed by the complainant.

The Master: You can ask him that.

Q. Are the following men employees of the complainant company, or any of them: G. E. Woods?

A. He is.

Q. W. P. Lawrence.

A. He is not.

Q. N. J. Sperling?

A. He is not.

Q. H. H. Himsworth?

3036 A. He is not.

Q. A. J. Hawthorne?

A. He is not.

Q. H. L. Jochum?

A. He is not.

Q. A. H. Zane?

A. He is not.

Q. J. B. Herrlin?

A. He is not.

Q. L. C. Armstrong? 3037

A. He is not.

Q. W. A. Pond?

A. He is not.

Q. None of them, then, except Mr. Woods, is employed by the complainant company?

A. Employed by the Consolidated Gas Company, no.

By the Master:

Q. What is Mr. Woods?

A. He is engineer of manufacture of the Consolidated Gas Company.

By Mr. O'Brien:

Q. Do these names recall that paper to you that 3038 I just spoke about?

A. No. I think when I used that telephone sometime last year that it had Mr. Lawrence's house number. I think it had Mr. Lawrence's house number on there.

Q. These men, all except Mr. Woods, are employed by the Astoria Company?

A. They are.

Q. Now, east of the building that you might call the tunnel building, there is a yard space running out about 100 feet wide, out to the river's edge?

A. Yes, 106.48 feet. 3039

Q. And there is a derrick lying there on the ground?

A. Yes.

Q. And three or four pieces of rusted, delapidated main or tunnel or flue?

A. That is scrap iron.

Q. It is scrap iron?

A. Yes.

Q. It belongs to the complainant, does it?

3040 A. It belongs to the Consolidated Gas Company, yes.

Q. And there is nothing else there except two or three little sheds that were used by the contractors of the tunnel?

A. Why, the double drum hoisting engine that belonged to that derrick is there, boxed in.

Q. It is right on the north side of 132nd street?

A. A couple of little sheds there that were used—there are a couple of little sheds there, yes, to that part of your question.

Q. And there is nothing else on the ground that you recall?

3041 The Master: Except as he has already testified.

A. Except as I have already testified, and the fences surrounding the block.

Q. Just north of the house where Jacobson, the watchman lives, part of which is used for the testing——

A. You mean the testing station building?

Q. We will not debate that. There is a house where the watchman lives?

By the Master:

Q. Let me understand you. Does the watchman

3042 live in the testing station?

A. He has a room in the testing station building.

The Master: We are talking about the testing station building then.

By Mr. O'Brien:

Q. There is a family living there?

A. He has his family living there.

Q. And they all live in his room?

A. No, they don't all live in one room.

Q. The watchman has a room with the testing 3043
room, hasn't he, next to the testing room?

A. They have quarters there.

Q. And the Jacobson family lives in the other portion of the building?

A. I don't know the name of the man who lives there.

Q. Well, he lives there with his family in the rest of the building, doesn't he?

A. The watchman lives in the building. I don't know his name or how large his family is.

Q. You did not mean to convey the idea that they were living in one room?

A. Oh, no. 3044

Q. When you said the watchman had a room——

A. He had quarters, I said.

The Master: You said a room.

Q. Now, just north of that there used to be a structure?

A. There did.

Q. What kind of a building was that that was removed?

A. It was an engine and compressor house.

Q. And the stone foundations are on the ground there still?

A. The concrete foundations. 3045

Q. Concrete foundations?

A. Yes.

Q. And then outside of the structures that I have mentioned, and a scarecrow, an old coat upon a pole out in the back yard, there are no other structures on this plot, are there?

The Master: Except as he has testified.

A. Except as I have already testified.

3046 Q. You saw the vegetable garden from where the scarecrow is up on the post?

A. West of the testing station?

Q. Yes.

A. Yes.

Q. Corn and potatoes growing?

A. Yes.

Q. Did you visit the Sedgwick avenue holder on Saturday?

A. I did.

Q. Did they tell you I had been there with Maj. Clark and Dr. Bemis?

A. They did.

3047 Q. Did Mr. Decastro talk with you Saturday?

A. At 99th street on Saturday morning.

Q. He told you of my visits, did he?

A. He did.

Q. Did he tell you some of the conversation we had?

A. He did.

Q. Did he tell you he had refused to give me information?

A. I did not get that question.

Q. (Read.)

A. He did not.

3048 Q. Did he speak about my request for information?

A. He did. He spoke of the things for which you had asked, some of them. I do not recall, I was just walking around.

Q. And did he indicate that he did not give them?

A. I do not recall his indicating anything.

Q. Did he tell you that I had been talking to him

on the telephone from the holder station at Sedg- 3049
wick avenue?

A. No, he spoke of being there when you were there.

Q. Being where?

A. At 99th street, when you were there.

Q. Then he did not refer in any way to my visit to the Sedgwick avenue holder?

A. I don't recall that he did.

Q. He did not tell you that I had called him up or that I had talked with him on the telephone from that holder?

A. No.

Q. Will you tell me, Mr. Alrich, why you with- 3050
held the fact when you were describing the properties and the uses of the properties of the complainant at Sedgwick avenue, that there was a portion of that property used for tennis courts and a tennis clubhouse?

A. I did not withhold it. Mr. Chambers asked me no question that brought out the fact.

Q. You were put on the stand to show and tell the uses of all the property of the complainant, that it claims as part of the basis in this rate case, were you not?

Mr. Ransom: I object to that. 3051

The Master: I will sustain that objection. Mr. O'Brien, are there tennis courts there?

Mr. O'Brien: There are.

The Master: Then let us find out where they are.

Mr. O'Brien: I want to know, your Honor, why it was withheld.

3052 The Master: That does not help us in this kind of a case.

Mr. O'Brien: Well, it shows the reliability of the witness, your Honor.

Mr. Ransom: This has all been testified to.

The Master: Whether they are reliable or not, I want to try and find out what the fact is.

Mr. Ransom: It has been testified to.

The Master: And I do not recall any testimony on it.

Mr. O'Brien: That is what I am bringing out. He has not made a frank statement.

3053 The Master: All right, then we will find out what the fact is. My recollection is that half of this block was used for the holders and other property and the rest of it is vacant.

Mr. O'Brien: That is not the fact, your Honor.

The Master: That is the testimony as I recall it. If it is not a fact let us bring it out.

Q. What is the diameter of the 10,000 cubic foot holders?

The Master: Ten million, you mean.

A. Ten million feet.

3054 Q. What is the diameter of that ten million-foot holder, yes?

A. 251 feet 3 inches on the neutral line.

Q. That represents the diameter, does it?

A. Yes.

Q. 210 feet?

A. No. 251 feet 3 inches.

Q. 251 feet 3 inches, and the length of this lot or plot on which that is located, running from the south to the north, is how many feet?

A. Well, it is—— 3055

Q. Take it along the Harlem Terrace, give us that dimension which is more on a straight line. Well, taking it along the curved line, it adds up 1519.86 feet on the curve.

By the Master:

Q. From Fordham Road?

A. From the north side of Fordham Road.

Q. Along Harlem Terrace?

A. To the northerly boundary of the property.

Q. To the northerly boundary of the property in use, as you testified?

A. To the property owned by the Consolidated Gas Company. 3056

Q. To the extreme north end of the property?

A. Correct.

Q. Only half of which, as I understood it, you claim was in use; is that the side?

A. I testified to a line 480 feet north of the West Fordham Road as bounding, together with the property lines to the south, the property occupied by the holder and related buildings and structures.

The Master: Is it within this area of 480 feet, Mr. O'Brien, you say there were tennis courts?

Mr. O'Brien: Yes, sir. 3057

By Mr. O'Brien:

Q. First we have here on West Fordham Road, that is the southerly side of this block 3236, a large governor building?

A. We have.

Q. It is approached from the street by steps running down?

A. It is.

3058 Q. A flight of stone steps. It stands back about 10 to 15 feet from West Fordham Road?

A. It stands back more than that.

Q. Well, 20 feet?

A. Yes, 20 or 25 feet.

Q. That building then is a rectangular building about, you might say 40 or 50 feet from the ground below?

A. The height of the building?

Q. Yes, the height of the building.

A. Oh, it is all of that in height.

Q. Then it runs back, runs north about 60 to 75 feet, doesn't it? Not more than that?

3059 A. Well, I should say 75 feet anyway.

Q. Then there is a platform, an iron platform running out to the steps that lead up to the holder?

A. Correct. Up to the tank gallery of the holder.

Q. The tank gallery of the holder, and the holder is about 20 feet at the most north of this governor building, is it not?

A. I think that space is more than that Mr. O'Brien. I think it is 25 or 30 feet in there.

Q. Well, you would not say it was more than 30 feet, of the governor house. You recall the little

3060 passageway there?

A. Yes, I think it might even be 40 feet, Mr. O'Brien.

Q. It is not any further than the north end of this building is it (indicating)?

A. Well, I do not know. The comparison is difficult under such conditions. My general impression would be, though, that it is 30 to 40 feet from the holder tank to the building.

Q. And that runs over practically to the middle 3061
of the holder, the southerly line of the holder—the southerly side of the holder?

A. The southerly side of the tank, yes.

Q. And the tank in diameter is 250 to 260 feet?

A. Yes.

Q. And then north of the holder there is nothing else except the tennis courts, is there?

A. And that very rugged precipitous property lying east and to the north of the holder.

Q. I am talking about structures now, not landscapes.

A. Yes, that is all the structures, the fences.

Q. How much of a space is covered by the ten- 3062
nis courts?

A. Oh, I do not know what the dimensions of the tennis courts are. The tennis courts between lines is 78 feet.

Q. I am talking about these tennis courts now. You don't recall?

A. No.

By the Master:

Q. How do they lay, north and south?

A. They lay north and south, and north of the 480-foot line.

By Mr. O'Brien: 3063

Q. They are rented, are they?

A. They rent the property from the company.

Q. Who rents them?

A. The University Heights Tennis Club.

Q. Am I in error when I say there are 6 tennis courts there?

A. You might not be. I do not know how many courts they have got there.

3064 Q. And there is a house, a clubhouse just north of the tennis courts?

A. Yes, a temporary frame building there.

The Master: Mr. O'Brien, I want to get it clear on the record as to whether there is any difference between you and the witness as to the location of these tennis courts. He testified in considerable detail to the space 480 odd feet from West Fordham Road, which he laid aside as it were for gas purposes.

Mr. O'Brien: I think he has been very liberal to the complainant in stating that, your Honor.

The Master: Do I understand there is a fence
3065 there at this lot?

Mr. O'Brien: No, your Honor.

The Witness: There is.

The Master: The witness says there is and Mr. O'Brien says there is not.

Mr. O'Brien: Perhaps we better be specific about that.

The Master: Assuming, Mr. O'Brien, if you please, the distance to be accurately stated by the witness, who says he measured it, of 480 odd feet—is it?

The Witness: Yes, but I did not say I
3066 measured it.

The Master: Oh, I thought you said you measured it.

The Witness: No.

The Master: The witness' statement is that for the distance, as he understands it, of 480 feet west of the Fordham road is the space occupied by the various buildings and holders of the Gas Company. Is there any question

but what the tennis courts are in the space 3067
north of that?

Mr. O'Brien: Of course, I did not measure it myself, your Honor, but my impression is that it overlaps on to this four hundred and eighty odd feet. You have got here a holder—let me give you the layout. There is the entrance to the governor house, and then that runs a distance of 60 to 75 feet.

The Master: Yes, and that makes about 100 feet. You have a space of 120 or 130 feet; then you have 250; that is nearly 400 already. You will probably have 50 or 60 feet back of that.

Mr. O'Brien: My idea is that the tennis 3068
courts begin north of the holder a few feet.

The Witness: 480 feet north of Fordham road is the fence, and then the property leads to the University High School Tennis Club.

By the Master:

Q. What kind of a fence is it; is it a high fence?

A. Yes, that is a high woven wire fence.

By Mr. O'Brien:

Q. It runs where; east and west?

A. East and west, yes.

Q. All along, across the lot?

A. No, it runs into the precipitous bank on the 3069
east, and on the west there is a driveway up there.

Q. What do you mean when you say "precipitous"?

A. What do I mean?

Q. Yes.

A. Well, I would describe the Palisades as being precipitous.

Q. You would? And you would put this in the class with the Palisades?

3070 A. It is very precipitous, the upper part of this property here.

Q. We were not talking about the upper part; we were talking about the wire fence?

The Master: Wait a minute. I do not care about these side things.

By the Master:

Q. How did you arrive at your figure of 180 feet in the line that you drew here, Mr. Alrich?

A. In this way: When the Tennis Club sought to lease this land, we determined that land which was necessary to the operation of this station and laid out that line 480 feet north of Fordham road.

3071 Q. Who laid it out?

A. Some one of our inspectors in our department. I do not recall just which one it was; but we have the record sketch in the office, giving the location of the fence, checking up——

Q. And the best of your recollection is that the tennis courts must be at least 480 feet from West Fordham road?

A. It is not a recollection. It is my departmental knowledge that we kept them north of the 480 feet, and we have a record that that is where their fence was put.

3072 The Master: That is the witness' testimony, and if it is not correct, we will get it in some other form.

By Mr. O'Brien:

Q. You are calling on your departmental knowledge now?

The Master: You need not answer that question. That will not get us anywhere.

Q. Did you design the governor house? 3073

The Master: I think that has been answered, hasn't it?

A. I think I probably did, but the answer is I designed the foundations and structural steel work.

The Master: I think that has been fully covered.

By Mr. O'Brien:

Q. Do you know how many valves there are in it?

The Master: Go on and answer it.

A. I did know at one time. I do not carry that in my head. It is a large number. 3074

By the Master:

Q. Can you tell Mr. O'Brien how many valves there are?

A. I cannot without any memorandum.

By Mr. O'Brien:

Q. Do you know anything about the mains that run northward?

The Master: I do not care whether he does. We have had enough of mains.

Mr. O'Brien: Do I understand counsel is going to tell us the story of the mains up there?

The Master: Mr. O'Brien, I have ruled that 3075 we have had enough of mains. Now the next question of this witness.

Mr. O'Brien: Your Honor, I want to have the record right.

The Master: I am going to have it right.

Mr. O'Brien: I want to find out from the witness, or other witnesses, where that gas goes to.

3076 The Master: This case is nowhere finished yet. So far as this witness is concerned at this time, I will not permit any more questions about mains.

Mr. O'Brien: I will make a statement now on the record, your Honor, that——

The Master: I won't take it. I won't take any statement.

Mr. O'Brien: This is on the statement of a frank disclosure.

The Master: I do not want any more statements about frank disclosures. Next question of this witness.

3077 Mr. O'Brien: I want to put on the record, your Honor, some time or other, my experience the other day——

The Master: We have had enough on the record. We have had enough about frank disclosures from you, and Mr. Ransom insisting just the contrary. This is not a jury case.

Q. Were you there Saturday?

A. I was.

Q. Were the boilers in use there?

A. At Kingsbridge?

Q. Yes.

3078 A. They were.

Q. All of them?

A. All of them in use.

By the Master:

Q. By that you mean available or actually being used?

A. Our holder stations have three holders. Always one has got to be in the situation so it can be cleaned. You must be able to clean one boiler

and have two boilers for duty. You must always 3079
have a spare boiler.

Q. Only two were on at that time then?

A. Only two were fired up.

By Mr. O'Brien:

Q. Were two fired up Saturday?

A. I am pretty sure two were fired up Saturday.

Q. Did you go down into the boiler room to see?

A. I did not go down to see. My impression is they were fired up?

Q. Were you on the boiler room floor?

A. I was.

Q. Or did you just look over that gallery?

A. Oh, no, I went down. 3080

Q. They were repairing one boiler, were they not?

A. They were cleaning the tubes on one boiler, as I remember it.

Q. How many tons of coal would you say were out in the yard there Saturday?

A. You mean lying west and north of the boiler house? A very large quantity. I would not make a guess.

Q. You would call that a very large quantity?

A. If I had it in my own cellar I would say it was. 3081

By the Master:

Q. Could you get it in your own cellar?

A. I could not.

By Mr. O'Brien:

Q. Would you say there were fifteen tons?

A. Fifteen? Oh, that would go into several thousand tons, that pile.

Q. Is that your idea of several thousand tons?

A. Yes.

3082 Q. Measured by the eye?

A. Yes, I think there were several thousand tons there.

The Master: Now we have had enough of that. That is his judgment. He may be all wrong about it, but it does not help us a bit.

Mr. O'Brien: It gives us a perspective of the witness, your Honor.

The Master: But I do not care anything about a perspective.

Q. Do you know the number of valves in the governor house?

3083 The Master: He has already answered that. The question is ruled out.

Q. When you made that little insert there of the lot at 132nd street, is that as per deeds. I mean covering the frontal?

A. It is.

Q. Is that in accordance with deeds?

A. It is. A conveyance.

Q. A conveyance in fee simple?

A. That is a question of law. I am an engineer. There is a conveyance that conveys the property by metes and bounds as shown on Exhibit 178.

3084 Q. You do not know whether it is a lease?

A. No, it is not a lease.

Mr. Ransom: That is in evidence. You can look at it.

Q. Were you ever in the tunnel ?

A. Oh, yes.

Q. Many times?

A. Why, I don't know really how many times I have been in the tunnel; quite a few.

The Master: What is the point of this?

Mr. O'Brien: Well, pretty near everything

I ask the witness has a good many points to 3085
it, your Honor.

The Master: Yes, but I want to know.

Mr. O'Brien: You know my questions work many ways; that is all.

The Master: Unless you tell me how your question bears upon the issue I won't permit the answer.

Mr. O'Brien: As we proceed with the complainant's case your Honor can see we only have the witness here to-day and we do not know whether he is coming back.

The Master: You have to tell me what the 3086
point of your question is. If it is not pertinent, I will not allow it.

Mr. O'Brien: We get the fact, of course, to the point of the main system. I do not want to ask the questions the Master has ruled out.

The Master: Next question.

Q. Did you cover any plants on Saturday?

A. Yes.

Q. Did you go to 42nd street?

A. No.

Q. 17th and 21st street plants?

A. Yes.

The Master: I do not care about that. 3087

Mr. O'Brien: That is preliminary to the next question, your Honor.

The Master: Let us have the next question without the preliminaries.

Mr. O'Brien: Give me the credit of having always something in mind that is admissible.

Q. We talked the other day about that buttress building in the 15th and 21st street stations?

The Master: Yes, we all heard that.

Mr. O'Brien: The coal storage.

3088 The Master: What is your question?

Mr. O'Brien: I want to know why he has called those separate buildings when they are under one roof and when there are walls north and south running along.

The Master: I rule that that subject has been thoroughly and exhaustively covered. The Master understands it thoroughly and he does not care whether the witness calls it one building or a series of buildings. He understands the construction and it is clear on the record. Next question.

3089 Mr. O'Brien: Then I won't waste any time on that question, if it is clear in your mind.

The Master: I do not care whether it is one building or 17 buildings.

Mr. O'Brien: Well, they have experts that claim that, as they did before.

The Master: We will handle the experts when they come on.

Q. Mr. Alrich, having gone through a post mortem last week, is there any part of your testimony you want to correct?

The Master: You need not answer that question. The witness will correct it if he desires.

3090 There is a stipulation on the record that corrections are to be made every few weeks. We will see what he wants to correct when he comes to it. The question is whether you have any more questions to ask on cross?

Mr. O'Brien: Then I will rest here with this understanding: There were two or three stations that I have not had an opportunity to visit, 65th street and 44th street, and I don't think it would take more than a half hour to

dispose of them after I have had that oppor- 3091
tunity.

The Master: I am not going to direct the witness to come back again.

Mr. O'Brien: I would like to reserve my right to ask him a few questions.

The Master: I will not permit any reservation at this time. You have had a whole week and I must insist on this cross-examination being finished this morning. Have you any questions on redirect, Judge Ransom?

Mr. O'Brien: I have just one or two questions.

Q. Mr. Alrich, do you know how much gas they 3092
have been producing at the 99th street station during the past year?

A. No, I do not.

Q. You do not know what the daily output has been?

A. I do not know.

Q. Have you ever been into the manufacturing book up there?

A. No, I never had occasion.

Q. Your duties do not carry you over the daily reports or monthly reports or into the manufacturing book of the plants? 3093

A. No, such a circumstance might have arisen in my long years with the company, but it has not been recent. I have no present recollection about it.

Q. The office of the National Coke Company and the plant there at 110th street is their principal place of doing business, is it not?

The Master: You need not answer that question, Mr. Alrich. It has been fully cov-

3094 ered. I won't permit any further cross-examination on that subject.

Mr. O'Brien: With that reservation, that I may check up a few things if necessary, I rest here.

The Master: You cannot reserve anything here, Mr. O'Brien.

Mr. O'Brien: Well, it may be a half hour at the next session.

The Master: You will have to finish your cross now.

Mr. O'Brien: I will state on the record that I have not had an opportunity to visit the 44th
3095 street station and the 65th street station and the Inwood property and some other properties of the company, and hence am not prepared to go ahead with the cross-examination or finish the cross-examination to-day, and ask that I be given the privilege of recalling the witness for an hour or two at some other session if I find it is necessary.

The Master: Have you any further questions to ask him on cross, Mr. O'Brien?

Mr. O'Brien: Nothing now, your Honor.

Mr. Chambers: I have.

3096 The Master: All right.

By Mr. Chambers:

Q. Mr. Alrich, will you take sheet 4, block 985, please, of Exhibit 178. Do you see lots 19 and 20 there?

A. I do.

Q. Are they being put to the same use now they were as you have testified prior to 1905 and 1906? You have testified to what use was being made of them now, haven't you?

A. Yes. 3097

Q. Is that the same use that was being made of them in 1905 and 1906?

A. I don't recall about 1905. I know in 1906 they were rented.

Q. They were rented out?

A. Yes.

Q. How long did that rental continue?

A. Until about 1911 or 1912, we had to crowd the tenant out. Somewheres in 1912 or 1913 we had to crowd the tenant out.

Q. And the same structures were on there then as now?

A. You are talking about lots 19 and 20 only? 3098

Q. Yes.

A. Lots 19 and 20?

Q. Yes.

A. Nothing more?

Q. No.

A. I think the tenants had some sort of temporary structures on those two lots. I am not sure about it. That is before we crowded him out there. We had that for storage space and I think Curtis & Blaisdell were the tenants.

The Master: The coal people?

The Witness: Yes. 3099

Q. The same structures are on there now as were there then?

A. No, I say I think they had some temporary structures. Now we use it for the storage of pipe and fittings.

Q. But you rented it for a long term of years up to about 1910 or 1911?

A. No, it was not a long term of years.

Q. Well, 1911, you said a moment ago.

3100 A. Well, it may be even as late as 1913 or 1914 that we got them out of there.

Q. Now, take the 21st street plant on sheet 5 of this same exhibit, lot 29 of block 952. Do you see lot 29 there?

A. I do.

Q. You have testified now to the use of that lot?

A. I have.

Q. Was it used in 1905 and 1906 for the same purpose it is now?

A. It was.

Q. So there is no change has come about in regard to that lot?

3101 A. It was used then for the storage of pipe and was until recently, when they threw some coal in there.

Q. When what?

A. They put some coal in there, in the westerly end of it.

Q. Then the same use of it was made back there as now?

A. Correct.

Q. Prior to 1905 and 1906?

A. Correct.

Q. Now, block 987, lot 37. Do you see lot 37 on

3102 there?

A. I do.

Q. Also lots 41, 42, 43 and 51?

A. Yes.

Q. Are those being put to the same use now as they were in 1905 and 1906?

A. Well, in 1905 and 1906 we had the oil tank, the big oil tank there we were building. South of that was the underground tank to which I have already testified and we had some thousands of

tons of coal on the rest of the block. At the 3103
present time, as I have testified, the United States Government's toluol plant occupies the portion south of the oil tank.

Q. Well, in 1905 and 1906 you had one there?

A. We had an oil tank.

Q. And the oil tank, is the oil tank gone now?

A. Oh, no, it is still there.

Q. And the coal, I suppose that is?

A. The coal was removed when the Government built the toluol plant.

Q. You don't store coal there now?

A. Why, no, it is occupied by the toluol equip- 3104
ment.

Q. So, with the exception of the toluol plant, there is no change?

A. Why yes, that veterinary hospital was built in 1907 on the north side of 20th Street, just about where the dash between 43 and 51 on the map is.

Q. That is used by the Government now?

A. That is used by the Government now. It was built in 1907.

Q. Now, with those changes, that is the coal being supplanted by the toluol plant?

A. Yes.

Q. And the veterinary hospital being supplanted 3105
by the toluol plant?

A. Yes.

Q. It is the same now as it was in 1905 and 1906? A. Yes, the two oil tanks on the northerly end.

Mr. Ransom: What block?

The Witness: Block 987.

Q. Now, take Block 1692, sheet 11. Was that two-story house there in 1905 and 1906?

3106 A. Yes.

Q. The one you spoke of now?

A. It was.

Q. Used for the same purpose then as now?

A. For the emergency repair men who had to be available throughout the entire day.

Q. I am asking was it used for the purpose then as now?

A. The same use.

Q. No change?

A. No change.

Q. Now, the Astoria Light, Heat & Power Com-
3107 pany, do they not rent land, bulkheads and hoisting apparatus at East 21st Street?

Mr. Ransom: I object to the question unless it relates to properties of the Consolidated.

The Master: I assume Mr. Chambers has reference to some of the property shown on Exhibit 178.

Mr. Chambers: Property at East 21st Street, sheet No. 5.

The Witness: Yes.

The Master: Go right ahead.

Q. Now, on this sheet 5 is there any of that land in pink that is rented to the Astoria Light, Heat
3108 & Power Company?

A. There absolutely is not any land there rented to the Astoria Light, Heat & Power Company.

Q. Has it been since 1906?

A. There hasn't been any land rented there to the Astoria Light, Heat & Power Company.

Q. All right. Any bulkheads rents to the Astoria Light, Heat & Power Company?

A. No, the bulkheads are leased from the city by

the Consolidated Gas Company, and 500 feet of the 3109
northerly side of the pier opposite East 21st Street, that is the 500 feet extending from the inshore end of the pier.

Q. So that there are no bulkheads of any kind shown upon that sheet 5 of Exhibit 178 that are leased to the Astoria Light, Heat & Power Company?

A. There are not.

Q. And have not been since 1905 or 1906?

A. No.

Q. Now, hoisting apparatus, is there any hoisting apparatus of any kind rented to the Astoria 3110
Light, Heat & Power Company found on that sheet No. 5?

A. There is not.

Q. Was there any?

A. There is coal handling equipment on the bulkhead which is not shown on sheet 5 which unloads the coal for the 21st Street station, and puts it into the conveyor which passes through that conduit or tunnel under the marginal street up into the coal shed.

Q. And that is rented to the Astoria Light, Heat & Power Company?

A. No, that is the Consolidated's coal handling 3111
equipment for this station.

Q. Well, was there any hoisting apparatus rented to the Astoria Light, Heat & Power Company shown on that sheet?

A. There is not.

Q. From 1905 down? A. There hasn't been any.

Q. Now, the East 111th Street, is any of the property shown in pink on that sheet rented to the

3112 Astoria Light, Heat & Power Company, speaking of land first, or buildings?

A. The land is not rented.

Q. Any of it? A. Not rented, none of it rented to the Astoria Company.

Q. Why do you lay accent on the rented?

A. Because I have already testified.

Q. Is it used?

A. I have already testified to the handling of coke from that property.

Q. Well, is any of the land shown in pink used by the Astoria Light, Heat & Power Company, shown in pink on that exhibit 12?

3113

A. I don't know whether the handling of the coke —to what extent the Astoria Company participated in it. The merchandizing company is the National Coke & Coal Company.

Q. How about on sheet 13, the same question?

A. Yes, the same answers.

Q. The same answer?

A. Yes.

Q. Any bulkheads on sheets 12 and 13 rented to the Astoria Light, Heat & Power Company?

A. The bulkhead is not rented, no.

Q. Any hoisting apparatus on sheets 12 and 13?

3114

Mr. Ransom: You are referring in every instance to Consolidated property?

Mr. Chambers: Yes.

Q. Is there any hoisting apparatus shown on sheets 12 and 13 rented to the Astoria Light, Heat & Power Company?

A. It is not rented.

Q. On those two sheets?

A. It is not rented.

Q. Now, is there any property shown on these 3115
two sheets outlined in pink for which the Astoria Light, Heat & Power Company pay any rental—land, bulkheads or hoisting apparatus?

The Master: Hadn't you better make that broad enough to include any other form of compensation?

Mr. Chambers: Yes, or other compensation.

The Witness: That is a question that lies beyond my knowledge.

Mr. Ransom: Are you referring to property outside of the pink area?

Mr. Chambers: No, the pink.

Q. You don't know but they do pay some com- 3116
pensation?

A. I don't know the arrangements by which this property of the Consolidated Gas Company is used for the handling and storage of coke. I know that the property is not rented outright. If it was rented by metes and bounds, I would know it.

Q. You say that all of the property in pink on these two sheets is in the control and custody and used by the Consolidated Gas Company, and not by the Astoria Light, Heat & Power Company?

A. Except so far as I have testified, and also by 3117
the National Coke & Coal Company, as I have already testified.

Q. Now, West 42nd Street on sheet 6, is any of the land in pink on that sheet, shown in pink on that sheet rented to the Astoria Heat, Light & Power Company?

A. There is not.

Q. Any of the bulkheads on that sheet?

A. There is not.

3118 Q. Rented to that same company?

A. None.

Q. Or any of the hoisting apparatus?

A. None.

Q. Now, is there any land, bulkheads or hoisting apparatus on that sheet rented to the Astoria Light, Heat & Power Company since 1905 and 1906?

A. There has not been.

Q. Does the Astoria Light, Heat & Power Company pay any compensation for any of the land, bulkheads or hoisting apparatus shown on sheet 6 to the Consolidated?

3119 A. Not so far as I know.

The Master: Is this a very satisfactory witness to get that information from, Mr. Chambers?

Mr. Chambers: Well, he testified to the use. That goes right to the use.

The Master: Yes, I know, but——

Mr. Chambers: If he will say that he does not know as to all of the Consolidated properties shown in this exhibit, if he will acknowledge that he does not know whether it is rented or leased out, why, it would be different, but as a matter of fact a lot of this property

3120 is leased out to this Astoria Light, Heat & Power Company.

Mr. Ransom: I object, that statement is absolutely incorrect, and I object to the statement.

Mr. Chambers: It is not leased.

The Master: Well, Mr. Chambers, what I am trying to get at is this——

Mr. Chambers: What is incorrect, what 3121
statement is incorrect?

Mr. Ransom: The rentals will be fully shown. This witness does not know.

Mr. O'Brien: You have just said it was incorrect. Are you withdrawing the statement?

Mr. Chambers: This witness has testified that all this property in pink is used by the Consolidated, and that is not a fact.

The Master: Go ahead and ask the questions.

Q. Now take—doesn't the Standard Gas Light Company pay some compensation for some part of the 71st Street property?

3122

Mr. Ransom: I object to the qustion as not within the knowledge of the witness.

The Witness: We have no 71st Street property.

The Master: We have no 71st Street property, for the record.

Q. Well, pay rental for some property, and that you know what it is, excluding the 71st Street?

A. I don't know how I can answer that question, Mr. Chambers.

Q. Well, on all this property in pink, doesn't the Standard Gas Light Company pay rental for some portions of it?

3123

A. It does not.

Q. Any of it?

A. None of it.

Q. And no compensation for any of it?

A. Well, if there is any indirect intercorporate relation regarding the use of any of this property, that I don't know about. There is no rental by

3124 metes and bounds of any piece of land here to the Standard Company.

Q. Well now, the New Amsterdam Company, do they pay any rental or compensation for a portion of the property shown in pink on this Exhibit 178?

A. They do not rent or lease, in the usual understanding of those terms, any piece of land shown in pink on this exhibit.

Q. Or pay any compensation?

A. Oh, you are going into intercorporate matters, of which I know nothing.

Q. Or any compensation?

3125 The Master: I think he has answered that. He says he doesn't know.

Q. Now, the Central Union Gas Company, does that company not pay some compensation for a portion of the property shown in pink on this exhibit 178?

A. It does not.

Q. You are certain about that, are you?

A. I am certain that the Central Union Gas Company leases none of the land shown in pink.

Q. I did not say that, I said paid compensation to. I used the word compensation.

A. I have no knowledge of what compensation
3 26 and other intercorporate relations there might be between the complainant and the Central Union Gas Company.

Q. Then as a matter of fact, you don't know whether portions of this property is used by the Central Union Gas and other companies or not?

A. Oh yes, I know they do not use it.

Q. You know they do not use any of it?

A. Oh, yes.

Q. You know that the Central Union does not 3127
use any of the property in pink?

A. Yes, they use none of it in pink, not a square inch.

Q. Is that true of the Standard Gas Light?

A. It is.

Q. That company does not use any of it?

A. Yes.

Q. Or the New Amsterdam Company?

A. That is correct.

Q. Or the Astoria Light, Heat & Power Company?

A. I said except so far as I have testified to the 3128
handling of coke.

Mr. O'Brien: Are you talking now about a particular place here, a particular page?

The Master: No, all of the set.

Q. Now, the Astoria Light——

A. In all of these questions I have in mind my testimony on the general office building, and of course you are not applying these to the general office building?

Q. No, with the exception of the general office building?

A. That has all been covered in detail.

Q. That is the only exception, the general office 3129
building?

A. Yes.

Mr. O'Brien: You don't mean to controvert what you have already said about various buildings?

The Master: I won't permit that, Mr. O'Brien.

3130 Mr. O'Brien: Well, he is falling into an erro right here, making a sweeping statement.

The Master: Make a note of it and I wi give you a chance to ask him when Mr. Cha bers gets through.

Q. Does your answer relate as to all these co panies to the period back to 1906?

A. You mean in every year since?

Q. Yes.

A. I don't recall one foot of land shown in pi having been leased since 1906 by any of the co panies that you have named, other than I ha testified with respect of East 111th Street, and t
3131 general office building.

Q. How about used by these other companie for which compensation is made to the Conso dated?

A. I know of no such use of these properties other companies.

Q. Now, the Municipal Lighting Company, d that company not pay compensation and use t third floor of 327 Avenue A?

A. I know of no compensation paid by it, a the property, the materials on the third floor that building, belong to the Consolidated Gas Co
3132 pany.

Mr. O'Brien: Is that the building that y have already testified is vacant?

The Master: You need not answer th question. Mr. O'Brien, you have got to ma a memorandum and ask them in your turn

Q. Is that the building you have testified alrea as vacant?

A. I did not testify it was vacant.

Q. Isn't that building vacant?

A. It is not. 3133

Q. 327 Avenue A?

A. It is not.

Q. Now, the National Coal & Coke Company, does that company not use and pay compensation for the use thereof of the stable at 20th Street and Avenue A?

A. I don't know.

Q. Do you know that that company paid rental as high as $1800. for a number of years for that stable?

Mr. Ransom: I object to going into these things with the witness. The question of rentals will be fully brought out by a competent witness. 3134

Mr. Chambers: He said it was used by the Consolidated, and if this coke company is throwing their money away, how about that?

The Master: I will allow the question.

The Master: I believe your statement to be incorrect.

Q. Now, doesn't the National Coal & Coke Company use the yard and offices, the Tenth Avenue Building, for which they pay a compensation to the Consolidated?

A. No such property is included in the Exhibit 178. 3135

Q. Doesn't the Astoria Light, Heat & Power Company pay compensation and use the land at 132nd Street and East River?

Mr. Ransom: Referring to property included in pink in Exhibit 178.

Mr. Chambers: Yes.

The Witness: They do not rent the property

3136 at East 132nd Street. As to any compensation which results from intercorporate relations, I know nothing, but they have no land lease.

Q. Would you say they do not use it? Will you say that the Astoria, Light, Heat & Power Company do not use the land at 132nd Street and East River?

A. They do not use it.

Q. And they do not pay any compensation for its use?

A. They do not rent the land. If there is any compensation that passes between the Astoria Light, Heat & Power Company and the complain-
3137 ant, I do not know about such matters.

Q. The United Electric Light, Heat & Power Company land on Tenth Avenue and 18th Street?

A. No such property is shown in Exhibit 178.

Q. Now, did you tell me that the National Coal & Coke Company had an office in the general office building at 15th Street?

A. I did, yes.

Q. And the Astoria Light, Heat & Power Company had offices?

A. Its accounting department is there, yes.

By Mr. Clark:

3138 Q. Mr. Alrich, take page 1 of this Exhibit No. 178, when were the buildings built on lot 5?

The Master: That has been fully covered, I think.

Mr. Clark: If your Honor please, I have been over this testimony, and there are a few of these points——

The Master: All right, if you say so.

A. The three story building on the front of lot 5,

that is facing on Elizabeth street, was built when 3139
I entered the employ of the company.

The emergency wagon house in the rear of the building, with the heating plant in it, was built very much later than that, after I entered the employ of the company, probably about 1911 or 1912.

Q. Do you know who built that?

A. The contractor who built the building?

Q. Yes.

A. I don't recall.

Q. Turning to page 4, can you tell the location of the street department buildings on that block, just where they are?

Mr. Ransom: I think that has all been gone 3140
over.

The Master: I imagine Major Clark does not think it has been covered, and I am going to let him ask the questions, if he says so.

Mr. Clark: It is not at all clear in the testimony.

The Master: Let us have it.

A. That group is a little irregular, Major, so that it makes it difficult to describe. Starting on the south side of 18th street, just west of the property line, and extending along for a distance of some 100 feet is the steel frame building, the easterly part of 3141
which is covered with corrugated metal, and in which there is stored fittings and pipe.

Then south of that, and abutting the easterly boundary of the property, is a frame building in which there is material stored.

Then just south of it, and detached, just about the offset there, in the middle of the block, is the building covered with sheet metal. Then over

3142 toward the center of the block, just about above the figure "5" is the brick office building and scale house.

Then in between it and north of it, and connecting with the steel frame building, is a frame enclosure.

The engine house, in which is the hoisting mechanism for the derrick, is on the southerly side of the center of the block near the numeral "7".

Q. Now, page 3, block 988, lot No. 1. When was the boiler house built?

A. That is the 14th street station—I do not
3143 know.

Q. Before your time?

A. Before my time.

Q. Do you know what the type of the condensers in that station is?

A. They are multi-tubular condensers.

Q. Of what make?

A. I don't recall who built them.

Q. On page 5, block 952, lot 30, when was that three story building built?

A. I don't know.

By the Master:

Q. You mean by that that it was before your
3144 time?

A. Yes.

By Mr. Clark:

Q. On page 6, the 42nd street plant, do you know the type of exhauster that is in there?

A. That is a Mackenzie exhauster.

Q. Now, page 11, that building that has the gas benches in it that are used for storage, what por-

tion of that building is occupied by those gas benches? 3145

A. You mean what part of that whole building that has boilers in one end——

Q. No, I mean the particular part that has those gas benches in. It has been testified that it is about 65 feet wide and has these gas benches running down the center.

A. Yes.

Q. What proportion of that building is occupied by the gas benches?

A. You mean apart from the storage part just the benches alone?

3146

Q. The benches alone.

A. I haven't any figures before me, Major, which would enable me to figure that out. Those unset arches are built up with storage material too, and I do not recall how many, what benches are set.

Q. Would you say it was one-third of the building?

A. Oh, no, it would be very much less than that.

Q. Less than one-third?

A. Yes.

Q. One-quarter?

A. I think possibly even less than that, Major.

Q. Are those benches ready for immediate use, 3147 those that are not unset?

A. I don't know how the connections stand on those benches, Major.

Q. Aside from the connections are they usable?

A. Why, I imagine they are.

Q. Do you know that they are?

A. I would believe that they are. I have not examined them with this thought in mind.

3148 Q. In your testimony the other day about the size of the holders that have been built, you said that you built a 400,000 foot holder for the Tarrytown plant. Do you mean that you planned that?

The Master: I think I ruled out any inquiry about the Tarrytown plant. I said it was not responsive to the question then asked.

Mr. Clark: It was not stricken out of the record. The answer is there.

The Master: You asked a question about New York City, and he said Tarrytown. We are not interested in Tarrytown.

3149 Mr. Chambers: If he spent his time constructing holders for outside companies, that would be material. The consumers here should not be charged with that.

The Master: That is another question.

Q. Did you build a holder for the Tarrytown plant?

A. I was connected with that work, yes.

Q. Are there any other plants outside of the city of New York that you have built holders for, or other structures while you were with the Consolidated Company?

A. Where I have built the work?

3150 The Master: Spent time on it.

Q. Had to do with it?

A. Well, I have had some connection with other work, I did not build any other holders.

Q. Well, any work?

A. I did some work on the coke oven plant of the Bethlehem Steel Works.

By the Master:

Q. While you were under salary by the Consolidated Company?

A. I did.

By Mr. Chambers:

Q. Was the Tarrytown holder built while you were with the Consolidated?

A. It was.

By Mr. Clark:

Q. Were there any other plants outside of the city?

A. I don't recall. I gave some advice on the foundations for the holder in Schenectady.

By Mr. Chambers:

Q. While you were with the Consolidated Company?

A. Yes.

By Mr. Clark:

Q. Did you ever do any work for the Yonkers plant?

A. Of the Westchester Lighting Company, yes.

Q. What work did you do for them?

A. Why, we repaired a holder up there.

Q. You mean the employees of the Consolidated Gas Company repaired a holder up there?

A. No, of the Westchester Lighting Company.

By the Master:

Q. Well, you were in it?

A. Yes.

Mr. O'Brien: He said "we".

By the Master:

Q. You were in it while you were being paid by the Consolidated Company?

A. Yes.

3154 By Mr. Clark:

Q. What work did you do with regard to it?

A. Supervised it, laid out the repairs and supervised them.

Q. Were there any other employees of the Consolidated Company who had to do with it?

A. No, I do not remember that any others did. All the others were employees of the Westchester Lighting Company.

Q. None of your subordinates had anything to do with it?

A. No, I was directing their men.

3155 Q. Are there any other plants of the Westchester Lighting Company that you had anything to do with?

A. Yes.

Q. Which one?

A. The Pelham works.

Q. What did you do there?

A. They built a 3,000,000 cubic foot holder with the foundations, and extended the generator house and put in another generator, put in new condensers, a new purifier box. They did some extensive work there, yes.

Q. How much of your time did that take?

3156 A. I do not recall, Major. In the course of a day I can cover a lot of territory.

Q. Were there any other plants of the Westchester Lighting Company that you have worked on?

A. I do not recall any others at the present time.

Q. Are there any plants in the Borough of Queens outside of the Astoria Light, Heat and Power Company that you have worked on?

A. Yes.

Q. Which plants? 3157

A. The Ravenswood works of the New Amsterdam Company and the Flushing works of the New York & Queens Gas Company.

Q. What did you do at Ravenswood?

A. I was connected with that work when I first went into the Gas business, when they greatly enlarged and extended the plant. There have been extensions since. They built a five million cubic foot holder, and a generator house containing generators, eight 12 foot generators, coal handling equipment, coal storage plant, condensers, scrubbers, boilers. 3 58

Q. When was this plant reconstructed?

A. There has been a lot of reconstruction work that has gone on there since 1901.

Q. Almost continually?

A. I would not say almost continually, more periodically.

Q. Did you bear the burden of planning that work?

A. Well, I had much to do with the designing and planning.

Q. Out at Flushing what did you do?

A. They built a million cubic foot holder with the foundations and the governor house. That was 3159 the work with which I was connected there.

Q. Is that the only other plant in Queens which you had anything to do with?

A. I think so, yes.

Q. Did you ever do any work in Brooklyn?

A. Some years ago I did do some work for the Brooklyn Union on the Williamsburg governor house. I did some work on that.

3160 By Mr. Chambers:

Q. While you were with the Consolidated?

A. Yes. I worked overtime, my own time.

By Mr. Clark:

Q. And all this work that you did was while y were with the Consolidated?

A. Yes, it was. I just stated to Mr. Chambe that the work I did for the Brooklyn Union Co pany was done by me at night.

By the Master:

Q. Otherwise the work was done by you whi you were being paid by the Consolidated Gas Co

3161 pany?

A. Yes.

By Mr. Clark:

Q. When you were qualified here as a witness you stated certain experience you had had as a ga engineer in building gas works, but you didn't men tion any of these companies. Why was that?

The Master: You need not answer that. That does not get us anywhere. He didn't men tion it; that's the answer.

Mr. Hayward: Don't you think it touches his credibility, the question of frankness and fair ness?

3162 The Master: The way I look at it, it is not a question of disputed facts as to what some body said out on the corner of Barclay Street and Broadway. Before this case is finished this record will be pretty nearly complete as to just what structures there are on these various properties, and that is all this witness' testi mony amounts to. I don't think you get any-

where by attacking the credibility of the wit- 3163
ness.

Mr. Hayward: But, here is a witness who takes the stand and attempts to enumerate—and to my belief at the time, and to your belief at the time—did enumerate his entire experience with the Gas Company and his structural work with Gas Companies. Now here we find, quite by chance, and by investigation outside of the court room, a vast amount of work that this witness has done in Consolidated Gas Company's time for other companies. It seems to me it is important to show, if possible, what the 3164
motive of the witness was in concealing all this other work that he has done? It touches directly his credibility as a witness and his frankness with the Master.

The Master: Don't you see that you have brought out the fact, and that it carries with it its own inference?

Mr. Hayward: We have a right to ask the witness on cross-examination why he omitted it?

The Master: You and I can draw inferences from it, from the point of view from which we look at it. 3165

Mr. Hayward: But we want to ask him further questions, from which you can draw further inferences, which we have a right to do.

The Master: I will not permit this question.

Mr. Chambers: There is no doubt but what they charged the consumers with his salary.

The Master: Probably they will have some trouble in that they should have done that, from what I can see.

3166 Mr. Ransom: Now, the representative of th
Commission has known for a week that that i
not a true statement.

The Master: The next question.

By Mr. Clark:

Q. Have you quite completed the lists of the com
panies that you have worked for while you have bee
employed by the Consolidated Gas Company?

A. Why, I could probably think of some others
I know I laid out some gas apparatus some years
ago for the San Francisco Coke and Gas Company
I was here in New York. I did that in my own time
3167 working at night.

Q. I mean on Consolidated time.

A. No, anything I have done——

By the Master:

Q. These other concerns, that you have done work
for, like the New York and Queens and the Astoria
you did that under direction of Superior officers?

A. I did.

By Mr. Clark:

Q. Any plants in New Jersey?

A. I don't recall anything in New Jersey, No.

Q. Any plants on Staten Island?

A. No.

3168 Q. Any plants up at Poughkeepsie?

A. No.

Q. That completes the list?

A. I made a plan for the reconstruction of the
Municipal Gas Works at Richmond, Virginia. I
did that in my own time, by working at night.

By Mr. O'Brien:

Q. You worked a good deal nights?

A. I have. 3169

The Master: You need not answer that question. Major Clark has the floor just now.

Mr. Clark: That completes what I have to ask.

By Mr. O'Brien:

Q. For whom did you do this work in Schenectady?

A. The Mohawk Gas Company.

By the Master:

Q. Was that one of the jobs you were directed to do by the Consolidated Gas Company?

A. No. 3170

By Mr. O'Brien:

Q. Who is the President of the Schenectady Company?

By the Master:

Q. Was it done in Consolidated time?

A. It was during my vacation.

The Master: Then I don't care who is the President of the Schenectady Gas Company.

By Mr. O'Brien:

Q. Who is the President of the Mohawk Gas Company?

The Master: You need not answer that.

Mr. O'Brien: Exception. 3171

The Master: Is the cross examination all completed now?

Mr. O'Brien: It is not completed so far as I am concerned.

The Master: Go ahead if you have anything to ask.

Q. What other officials or engineers have worked on similar work outside the Consolidated Gas Company?

3172 A. I do not pretend to give the life story of——

Q. Were you assisted by subordinates of yours in doing the work that you have just described for other gas companies on the Consolidated Gas Company's time?

A. In my work at the New Amsterdam works I was at times assisted by my subordinates employed by the Consolidated Gas Company. The same thing would be true in the case of the work at the Flushing Works of the New York and Queens; also at the Astoria Works, as I have testified.

By the Master:

3173 Q. How about Tarrytown?

A. Yes, at Tarrytown and yes at Pelham.

Q. At Yonkers?

A. No; on the Yonkers work there were no Consolidated employees there but myself.

By Mr. O'Brien:

Q. Then you did some mechanical work for the Westchester Gas Company, or the Company that has the plant at Yonkers?

The Master: That question need not be answered. It has already been answered.

Q. Will you state the nature of that work?

The Master: That has already been covered.

3174 Something new, Mr. O'Brien.

Q. In the cases where you stated you had done work for other companies within the time of the Consolidated Company, were there any other engineers than yourself, of the complainant, engaged is that work?

A. Yes, in the case of the New Amsterdam Gas Company; yes as to Astoria; yes as to New York & Queens; yes as to the Westchester Lighting Company.

Q. Who were they? 3175

Mr. Ransom: In all these matters they are making this man their own witness. It is not within the scope of any cross-examination.

A. I should say a general statement was that our engineering and construction department had done the work at those plants, and that varying numbers of the Consolidated Engineering staff had participated in the work at these different stations.

Q. From the work that you say you did at Yonkers, are you able to tell us how gas is furnished by the complainant to the Yonkers company?

The Master: You need not answer that question. 3176

Mr. O'Brien: Your Honor, this is very important.

The Master: I know it is important, but this is not cross-examination.

Mr. O'Brien: Will you hear me a minute?

The Master: Yes.

Mr. O'Brien: This goes directly to the question as to the use of the properties of the complainant. If the witness is not acquainted with the amount of gas furnished and the way it is furnished to the Westchester Lighting Company, then he can easily say he doesn't 3177 know.

The Master: I am not going to go into that with this witness.

Mr. O'Brien: But this goes directly to the question of the use of the property.

The Master: I am not going into it with this witness.

Mr. O'Brien: Will you permit me to make a record on it?

3178 The Master: Certainly.

Mr. O'Brien: Exception.

Q. Will you say that the holders and the mains connected with the holders in the Sedgwick avenue station are not used partly for the purpose of furnishing gas to Yonkers?

The Master: The question is not allowed. It is not proper cross-examination of this witness.

Mr. O'Brien: Exception.

Q. Will you state what amount of gas and to what extent the holders at Sedgwick avenue are

3179 used for furnishing gas to any other companies outside of the City of New York?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Will you state whether the work which you did at Pelham was on the main system of that plant, or with respect to the governor house of that company?

The Master: He has already told us what he did.

Mr. O'Brien: Exception.

The Master: You have brought out the point that he spent a lot of his time on the plants of

3180 other companies.

Mr. O'Brien: This all bears on the question of the uses of this company's property. Your Honor will see that if he comes in here and gives us a statement which by presumption and inference, and by its direct effect indicates, say for illustration the station at Sedgwick avenue indicates that it is entirely and exclusively used by the complainant company for furnish

ing gas to its consumers, while the fact is that 3181
it is used in part for these other purposes, for furnishing gas to Yonkers and other places, these questions all bear directly upon the question of the use of the property.

The Master: I am perfectly clear in my mind, and I am going to insist on it, that these examinations and cross-examinations shall proceed according to the rules of evidence. I am likewise clear in my mind, that if, when this case is closed, it becomes necessary to recall this or any other witness to make perfectly clear upon this record and to the satisfaction 3182
of the Master the fact to be determined, the witness will be recalled. We will go through with it by proceeding in accordance with the rules of evidence.

Mr. O'Brien: May I ask counsel through the Master at this time——

The Master: No. You cannot make any more inquiries of counsel, I will not permit it.

Mr. Hayward: Has not the witness testified that everything shown in pink is used exclusively for the purposes of this Company?

The Master: His testimony is what it is. I have made my ruling, and I think I have made 3183
my position perfectly clear.

Q. Referring to the time spent by other engineers of the complainant besides yourself on work for companies other than the complainant, is a record kept of that time in the office at 15th Street?

By the Master:

Q. Do you know?

A. I do.

Q. Is there?

3184 A. In respect of time of all men on a weekly or daily pay rate, the time is absolutely charged to those companies.

By Mr. O'Brien:

Q. Are the engineers on a weekly or day rate?

By the Master:

Q. How is it as to you, not being on a weekly or day rate?

A. The company has a method of apportioning my salary to these other companies.

Q. That is the best information you can give us?

A. That is the best information I have.

3185 By Mr. O'Brien:

Q. Do they turn in reports, the other engineers, do they turn in reports similar to the reports which you say at times you have turned in to Mr. Morris?

The Master: The men on a monthly and yearly basis.

Q. Have they turned in to their superiors reports similar to those you testified you turned in from time to time as to your time?

A. Engineers subordinate to myself make regular reports as to the time devoted to the work of these other companies.

Q. And are they kept on file in the office?

3186 A. Well, whatever reports of that kind there are of course are in existence.

Q. Do the other engineers, men who are not subordinate to you, turn in reports such as you have just testified you turned in to Mr. Morris?

A. I don't know what they do other than that they have participated in these conferences on that question to which I have already referred in my testimony.

Q. You mean the conferences held from time to 3187
time where you discuss the quantity of time used on extraneous work, is that it?

A. Yes.

Q. Then you mean to indicate that the reports made were more or less oral reports to Mr. Morris?

A. I have so testified.

The Master: Did you want to ask something, Mr. Hayward?

Mr. Hayward: No.

The Master: The cross-examinations are finished, are they?

Do you want some redirect? 3188

Mr. Ransom: Briefly.

The Master: The redirect will go on at 2:10.

Recess until 2:10 P. M.

AFTERNOON SESSION.

By Mr. Ransom:

Q. Mr. Alrich, you were asked at page 774 of the record by Mr. O'Brien to give the amounts in round figures of money spent for work done at various 3189
stations of the Consolidated Gas Company since 1905. What class of work did you intend to include in the term "work" as used by you?

Mr. O'Brien: I do want to object to the question as not being a correct interpretation of questions asked by Mr. O'Brien.

Mr. Chambers: Would you mind reading that question?

The Master: I see the question at folio 2320:

3190 "And the $112,000. covered entirely the work done on the 14th Street station since 1905"?

Mr. Ransom: Now I am asking him to indicate what he included within the term "work".

The Master: In his answer?

Mr. Ransom: Yes.

A. New construction work; no repairs.

Q. Could you state with the aid of any memorandum before you the exact amount spent for improvements for the stations concerning which you were interrogated by Mr. O'Brien?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

3191 Q. You may answer yes or no.

A. I can.

Q. At the 14th Street station, concerning which you were asked by Mr. O'Brien to give the round numbers, what amount was spent by the complainant on additions and improvements to the 14th Street station from December 31st, 1905, to December 31st, 1918?

Mr. O'Brien: Just a minute. Your Honor, I object to the question as incompetent, irrelevant and immaterial.

Mr. Ransom: He was asked to give——

3192 Mr. O'Brien: I do not suppose the counsel wants to prove the expenditures through the witness.

Mr. Ransom: The door was opened on this.

The Master: The witness, as I understand it, has testified that he knew how the work was going on and how much had been spent.

Mr. O'Brien: Before he goes into that I want to examine the witness as to his knowledge of

these expenditures, if they are going to have 3193
them proven this way.

The Master: No.

Mr. Ransom: You opened the door.

Mr. O'Brien: I asked whether a certain amount would cover it.

The Master: Yes, and he is entitled to say what the amount is and I am going to allow the question.

Mr. O'Brien: Your honor, will you permit me as a preliminary to that question—will you allow me to ask him as to his——

The Master: No. 3194

Mr. Ransom: He is Mr. O'Brien's witness on this, not my witness.

The Master: I will let you cross-examine him on this new matter if it becomes necessary.

Mr. O'Brien: We will go into the vouchers, and if counsel is going to open it up I am going to preserve my rights under the objection. Then they have got to bring in the original underlying figures. We will go into now just the same as any other time. I will insist, of course, upon all the details being covered by proper original documents or papers cover- 3195
ing expenditures, as I shall on all the moneys expended by the complainant in any event.

The Master: Let us get this right. The question now relates——

Mr. Ransom: To 14th Street.

The Master: To the work done on the 14th Street station since 1905.

Mr. Ransom: From December 31st, 1905, to December 31st, 1918.

3196 The Master: Being the matter referred to at folio 2320 by Mr. O'Brien.

Mr. Ransom: Page 774.

The Master: Page 774. As I understand it, this was work with which the witness had to do and knew the figures.

The Witness: It is.

The Master: And a memorandum he now has simply refreshes his recollection as to the figures.

The Witness: That is correct.

By the Master:

3197 Q. Having looked at the memorandum you are now able to give us the figures?

A. I am.

Q. Give them to us.

The Master: Exception to Mr. O'Brien.

Mr. O'Brien: What is that?

The Master: Exception to you.

Mr. O'Brien: I would like to know if he is being presented as a witness on the details of this expenditure, because I shall insist on all the details being proven.

Mr. Ransom: You asked him, not I.

Mr. O'Brien: I have no objection to this wit-
3198 ness proving something, but I shall insist upon the original papers, showing the expenditure of every dollar of that money being brought in here and the man who had charge of sub-contract work, the purchase of material and all that—proving it right from the beginning, that is all.

The Master: I am going to allow this question. Answer this question, Mr. Alrich.

A. $112,056.05.

By Mr. O'Brien: 3199

Q. Is that exclusive or inclusive of charge for construction, engineering and superintendence?

A. That is exclusive of engineering and superintendence.

Q. What amount was spent by the company on additions and improvements to the 42nd Street station from December 31st——

Mr. O'Brien: I object, your Honor.

Mr. Ransom: Let him finish the question.

The Master: Let him finish the question.

Q. What amount was spent by the company on additions and improvements to the 42nd Street station from December 31st, 1905, to December 31st, 1918, concerning which you were interrogated by Mr. O'Brien and asked to give the round figures at page 774 of the record? 3200

Mr. O'Brien: Same objection, your Honor, on the ground first that it is not redirect, that it opens up a new field of investigation that was not covered by the direct testimony and was not brought out by the cross, in spite of what counsel says; secondly, I ask the privilege of examining the witness now before he answers that question, as to his knowledge of the work done, his knowledge of the bills for 3201
the work done, the amount of material that was spent, whether done by the company's employees or others, and other details of that kind.

The Master: No.

Mr. O'Brien: That is a matter—he is not qualified to answer the question that has been asked of him.

3202 The Master: Objection overruled, and excep
tion granted.

A. $11,608.46.

Q. At the 18th street station what amount wa
spent by the complainant company on addition
and improvements from December 31, 1905, t
December 31, 1918, concerning which you wer
interrogated by Mr. O'Brien and asked to give th
round figures at page 774 of the record?

Mr. O'Brien: Your Honor, I make the sam
objection, and I add to it the fact that couns
has interpreted the question differently fro
3203 the way it was put, and for the reason that th
witness has not shown himself to be acquainte
with the details that the question calls for.

The Master: Objection overruled, and excep
tion.

A. $6,205.75.

Q. What amount was spent by the complainan
company on additions and improvements to th
44th street holder station from December 31, 190
to December 31, 1918, concerning which you we
interrogated by Mr. O'Brien at page 774 of the re
ord?

Mr. O'Brien: Your Honor, I make the sam
3204 objection, and I add to the objection as alread
stated, with regard to the previous five que
tions, the further objection that none of th
properties that has been referred to in th
and the other questions, has been shown to
used by the complainant exclusively; tha
the proof which has been adduced by the dire
and cross-examination shows that all of the
properties are either not used at all in the ma

ufacture and sale of gas, or are used in con- 3205
ducting the work of companies other than the complainant, and until the proper inventory is proven, until it has been shown what properties the company owns, certainly the questions are objectionable. We have not anything here, nor has anything yet been proven, that the company owns many of these properties. Reference is made, for instance, to the 14th street plant, the 14th street station. The proof is that almost the entire portion of a block is either not used at all, or is occupied by persons and companies not the complainant. Then as 3206
to the old coal gas plant, the proof is that it is not in use. There is no proof in the case that it is necessary as part of the property of the complainant to do the complainant's business of making and selling gas, and therefore, until some proof is offered, these questions are absolutely out of order. There has not been any proof here that this vast amount of property that has been abandoned, we might say, with nobody there, except a watchman to guard it—that that is necessary to the manufacture of gas at the present time on the part of the complainant. 3207

The Master: Now, before I rule on that, you say the 44th street holder station?

Mr. Ransom: The 44th street holder station, yes, sir.

The Master: I do not see any question on the record about that.

Mr. Ransom: I think it is a typographical error.

Mr. O'Brien: I do not recall having asked the witness anything about 44th street.

3208 The Master: I won't permit any inquiry about the 44th street holder station unless you can point out to me how it was included in the cross-examination.

Mr. Ransom: It was inaccurately called 42nd street storage station.

Q. Is there any 42nd street storage station, Mr. Alrich?

A. There is not.

Q. And at page 774, folio 2322, you were asked whether $65,000 would cover the work done in the period indicated at the 42nd street storage station. Did you understand that question to relate to the
3209 44th street holder or storage station?

Mr. O'Brien: I object to that question as incompetent, irrelevant and immaterial.

The Master: I am going to try to dispose of it this way. You had before you, Mr. O'Brien, when you asked these questions a statement, did you not?

Mr. O'Brien: Well, I had some paper before me.

The Master: Didn't you refer to the 44th street holder station?

Mr. O'Brien: I do not recall.

3210 The Master: I will allow this question.

Q. What is the figure for 44th street?

A. On page 774 of the record?

Q. No, what is the correct detailed figure in dollars and cents?

A. 64——

Mr. O'Brien: I make the same objection, your Honor, on the grounds previously mentioned by me.

The Master: Overruled.

The Witness: $64,904.57.

Q. Now, what amount was spent by the company 3211
on additions and improvements to the 63rd street holder station from December 31, 1905 to December 31, 1918, concerning which you were interrogated by Mr. O'Brien at page 774 of the record, and gave the round figure?

Mr. O'Brien: I object on the same grounds.

The Master: Same ruling.

The Witness: $26,288.91.

Q. What amount has been spent by the complainant company on additions and improvements for the 21st street station from December 31, 1905 to December 31, 1918, concerning which you were 3212
interrogated by Mr. O'Brien at page 775 of the record, and then and there gave the round figures suggested by him?

Mr. O'Brien: I do not see that on that page, and I object to it as not a correct interpretation of anything I have quizzed the witness about.

The Master: I don't think Mr. O'Brien asked the witness for his round figures on 21st street. I think he stopped when he included the items that you have covered aggregating two hundred and twenty-two or two hundred and twenty-three thousand dollars.

Mr. Ransom: I think your Honor is correct. 3213
He was interrogated but did not give the figures.

The Master: Yes.

Mr. Ransom: Well, I will withdraw the previous question. I will now ask him:

Q. What amount was spent by the company on additions and improvements to the 21st street station from December 31, 1905 to December 31, 1918,

3214 concerning which you were interrogated by Mr. O'Brien at page 775 of the record?

Mr. O'Brien: I object on the ground that it is not a correct interpretation of Mr. O'Brien's question, and on the ground as previously mentioned.

Mr. Ransom: Well, I will withdraw the "concerning which you were interrogated".

The Master: The question that I am now asking is a broad one of this witness, "How much did you spend on the 21st street property since January 1, 1905"—that is your ques-

3215 tion.

Mr. Ransom: On additions and improvements.

Mr. Chambers: We object on the ground it is an improper way to prove it.

Mr. Ransom: He has been interrogated about these items, or I mean he has been interrogated as to the work, he has been asked to tell what the work was and the extent of his knowledge about it. Now, if the things——

Mr. Chambers: (Interrupting.) I want to complete my objection, that the witness has not shown that he is qualified to speak; in fact,

3216 he has shown he is not qualified.

Mr. Ransom: He is certainly as qualified on this as he was on the other, and by making him their witness on these points, we expect——

Mr. O'Brien: Your Honor, I want to call your attention to the manner in which the questions referred to on page 774 of the record were put by me.

The Master: Don't argue that, Mr. O'Brien. 3217
So far as the other parts were concerned, I allowed the questions because I felt that you had opened the door, but the inquiry now, I have an entirely different question before me. I will assume now that Mr. Alrich is called as a witness and disregard everything else he said, and he testifies as he already has testified, "I had to do with that work, I had to do with the payment for that work, I knew at that time how much it cost, I know now how much it cost except that I haven't any figures before me in my mind," and then he is handed 3218
a tabulated statement of their figures, prepared by somebody, and that tabulation of figures shows an amount. Now, if this witness is prepared to swear, after looking at that, of his own knowledge, but having had his recollection refreshed, am I not required to take it, leaving you to cross-examine afterwards as to how he is able to make that statement?

Mr. O'Brien: You are not, your Honor, because no reference was made in the testimony in the questions I asked to the 21st street station except this—— 3219

The Master: (Interrupting.) I disregard that altogether. You don't get my point. I am assuming now as to this witness and as to this item in question, that no question has ever been asked before, and he is called as a witness for the purpose of proving——

Mr. Chambers: Is he called now anew?

3220 The Master: Yes, he is called anew for th purpose.

Mr. Chambers: I think we are entitled request that you call him now on a n proposition.

The Master: You have a right to cro examine, if I allow this question.

Mr. Chambers: I think we should have preliminary examination.

The Master: No.

Mr. Chambers: Because it is a substanti sum of money.

3221 The Master: No. Here is a witness w says, "I knew, I know how much it cost Take this as an illustration, "I know, and knew at the time I bought this suit of cloth how much it cost me, knew it absolutely; don't remember now, but my bookkeep hands me a memorandum in which he says was $60 or $65". I say that is right, and I member it absolutely.

Mr. Hayward: Tell us your tailor, who you got them for $65.

The Master: Well, this is about four yea ago, this is an old suit. Now, won't I be in

3222 position to say of my own knowledge that cost me sixty dollars or sixty-five dollars?

Mr. Chambers: And he has already testifi he was an engineer and knew nothing abo the books, again and again and again.

The Master: But he said he knew what the items of construction cost.

Mr. O'Brien: Will your Honor hear me minute?

The Master: Yes. 3223

Mr. O'Brien: The witness was called here to verify or identify certain maps of the complainant, producing a diagram of real estate with pink colored sheets, and then in the cross-examination he was asked in general terms, and I might characterize this testimony generally as referring in rough figures and rough round descriptions or approximations to various things that came within the scope of that examination. Now, all the way through he was insisting that he could not without memorandum and so forth verify anything, and 3224
that is the position he took and counsel took that position. Now, so far as counsel for defense are concerned, it does not matter much by whom they may prove that they spent money on replacements or repairs, but it was not asked for by the cross-examination of the witness.

The Master: Well, I am assuming that, Mr. O'Brien.

Mr. O'Brien: But I ask you—I did not open any door by asking him for the approximate figure.

The Master: You don't understand me, Mr. 3225
O'Brien. I am assuming that to be so. I am assuming now that we have a new witness.

Mr. Ransom: Well, may I just say a word on that? If your Honor is of opinion that with respect to these items, concerning which he was not asked for the round numbers, that he is the complainant's witness and not the defendant's witness, then I shall withdraw the

3226 question and withdraw the witness at this time on that phase of the matter.

The Master: Well, that ends the discussion.

Mr. Hayward: You won't examine him unless it is redirect?

Mr. Ransom: I won't examine him unless I recall him on that.

Mr. O'Brien: Well, I do hope that this is his last day on the witness stand in this case.

Mr. Ransom: Oh, well, we will agree on that.

The Master: Next question.

Q. Now, were each of the amounts stated by you
3227 exclusive or inclusive of charges for engineering or superintendence?

Mr. O'Brien: I object to the question as incompetent, irrelevant and immaterial.

The Master: Allowed; exception to Mr. O'Brien.

The Witness: They were exclusive of such charges.

Q. You were asked by Mr. O'Brien whether you were acquainted with the withdrawals from these different properties, and you answered him. What properties did you understand the question to relate to?

3228 Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. O'Brien: The question, your Honor, whatever it was, speaks for itself, and the answer is not changed by the witness saying now he had in mind something else than what he testified to.

The Master: Well, I will see what he testi- 3229
fies first.

Mr. O'Brien: Exception.

The Witness: I understood it as relating to the properties named by him on pages 774 and 775, to wit, the 14th street station, the 42nd street station, the 18th street station, the 44th street station, the 63rd and the 21st.

Mr. O'Brien: Your Honor, the questions and answers here are in pretty plain English, and I think that they do not need the interpretation of the witness, and that is all counsel is trying to bring out here now, is some interpre- 3230
tation of the witness, of questions and answers that are in the record. They are in pretty plain English, and the English language speaks for itself.

The Master: The question is allowed.

Mr. O'Brien: I want at this point to read to your Honor just what the record shows.

The Master: I have read it.

Mr. O'Brien: Are you acquainted with the withdrawals from these different properties?

The Master: I have read it.

Mr. O'Brien: Previously to that I asked him "You have not included, nor understood me to 3231
include, the 21st street water gas station in my questions", and he said, "I have not". Then I said, "Are you acquainted with the withdrawals from those different properties." Well, it is clear what that means.

The Master: Next question.

Q. You stated on cross-examination your testimony regarding the lands and improvements re-

3232 lated chiefly to the present time. Now, excepting——

Mr. O'Brien: At what page?

The Master: Where is that?

Mr. Ransom: I have forgotten the exact page.

Mr. O'Brien: Well, I would like to know the page. I don't want a general characterization.

The Master: Wait a minute, Mr. O'Brien. I can remember it almost as well as if I had the record here.

Q. (continued)—excepting where you had testi-
3233 fied that work had been done during the year 1919, were the conditions on the land and improvements of the Consolidated Gas Company substantially the same in December, 1918 as at the present time?

Mr. O'Brien: That is objectionable, your Honor.

The Master: Wait a minute. It is a pretty long question. I want you to read it slowly again.

Mr. O'Brien: You will have to go back over this whole record and bring it up for review, your Honor.

The Master: Give me a chance to get the
3234 question, will you? Read the question.

The question was read by the reporter as follows: "Q. You stated on cross-examination that your testimony regarding the lands and improvements related chiefly to the present time."

The Master: Strike out "You have stated on cross-examination". Read the balance of the question.

The balance of the question was read by the 3235
reporter as follows: "Excepting where you have testified that work had been done during the year 1919, were the conditions on the land and improvements of the Consolidated Gas Company, substantially the same in December, 1918, as at the present time?"

Mr. O'Brien: Your Honor, that brings up every question that has been asked here on direct and cross-examination. Some of them refer to 1911.

The Master: No, I don't think you understand the question.

3236

Mr. Ransom: May I try to reframe it?

The Master: No, I struck out his first statement as to what he said on cross-examination, because it did not accord with my recollection. He now has a square question before me, and that is this, as I understand it; listen Judge Ransom. "Except as you have testified that changes occurred during 1919, are the properties today in the condition that they were in on December 31, 1918?"

Mr. Ransom: That is the other way. "Were the conditions on December 31, 1918, the same as they are at the present time?" 3237

The Master: What is the difference in the way you put it?

Mr. Ransom: Because his testimony is of the present time, and not as of December 31, 1918.

Mr. O'Brien: Why, your Honor, that question——

The Master: Wait a minute, please, Mr.

3238 O'Brien. I put it the other way. I said, "Are the conditions the same now as they were," and you say no, you put it the other way around, "Were the conditions the same then as they are now." Is there any difference?

Mr. Ransom: I don't think there is any substantial difference.

Mr. O'Brien: We would like to object to that, your Honor. We don't know what he means by conditions. In the first place, it brings up all the examination of the witness in the cross and direct examination, particularly the cross-examination.

3239 The Master: I will sustain the objection.

Mr. O'Brien: Went into various periods.

The Master: Except as he said things were done in 1919, conditions must be the same as they were.

Mr. Ransom: Well, upon that basis then.

Mr. O'Brien: I don't know what he means by conditions.

The Master: Objection sustained.

Redirect-examination by Mr. Ransom:

3240 Q. Mr. Alrich, at page 916 of the record questions were addressed to you with respect to the 57th Street building, as to the ornate character of the facade. Have you a photograph showing that building at or about the time of completion?

A. I have.

Q. Will you produce it?

A. I produce such a photograph.

Q. Was this taken in the last stages of the work at 57th Street?

A. It was.

By Mr. O'Brien: 3241

Q. Did you take it?

The Master: I don't care who took it.

Mr. O'Brien: I just want to verify it, that is all.

The Master: If he swears it is a correct representation of the building I will take it.

Q. Is this a correct representation of the building at the time, showing the exterior and the other matters therein shown?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, it not having been shown that the witness either took the 3242
photograph or was present when it was taken, or knows who took it.

The Master: Will you tell me, Mr. O'Brien, what difference it makes to you, to me or anybody else who took that photograph?

Mr. O'Brien: All the difference in the world, your Honor.

The Master: If, as a matter of fact it is a correct representation of the building.

Mr. O'Brien: It is a question whether it is a correct photograph or not, isn't it?

By the Master:

Q. Is that a correct photograph? 3243

A. It is, as of the date when it was taken.

The Master: Objection overruled.

Mr. O'Brien: Exception.

By Mr. Ransom:

Q. Do you know the date when it was taken?

A. I do.

Q. What was the date?

3244 A. March 31, 1917.

Mr. Ransom: I offer the photograph in evidence.

The Master: It is received.

Mr. O'Brien: Your Honor, I would like to have a chance to object.

The Master: You did object.

Mr. O'Brien: No, I have not.

The Master: Well, object.

Mr. O'Brien: I am going to object any way, go through the form.

The Master: I think there is more nonsense in court about who took a photograph, when
3245 a witness swears it is an exact representation, than any other rule I know of. A twelve year old boy could take that photograph, and if it is a correct photograph, it is correct.

Mr. O'Brien: The attention of the witness was called to questions that were asked him about the building as it stood today. We are now asked to receive something that was taken while this building was in process of erection.

The Master: I am going to receive it if that is the only objection.

Q. Mr. Alrich, has the facade or exterior stone
3246 of the building been changed in any way since that was taken?

A. You mean by the addition of architectural features?

Q. It has not?

The Master: Has it been changed at all?

A. It has not except that the glass was not in the windows when that was taken.

Q. In other words, this picture showing the front

of this building, with the exception of the scaffolding that is there, and the windows not in, is a correct picture of the building today? 3247

A. Yes.

Photograph received in evidence and marked Complainant's Exhibit 184.

By Mr. O'Brien:

Q. You have not withdrawn your statement, have you that it is a very ornate facade?

The Master: Just one moment. Judge Ransom still has the floor.

Mr. O'Brien: I know, but your Honor has interpolated a lot of questions. 3248

The Master: But I always have done that before.

Mr. O'Brien: All right, it means a longer cross-examination, that is all.

By Mr. Ransom:

Q. Do you know, Mr. Alrich, on what date this building was occupied by the complainant, or about what date?

A. I do.

Q. What was that date?

A. About the 15th of April, 1917.

Q. Do you know the contract date for the completion for occupancy of this building? 3249

A. I do.

Q. What was it?

A. March, 1917.

Q. Do you know what date in March?

A. The 15th.

Q. Referring to the oil tank on Lot 37, Block 287, can you state whether that was built before or after December 31st, 1905?

3250 A. I can.

Q. Which was it?

A. It was after December 31st, 1905.

Q. Who is Mr. Stanek, Senior?

The Master: Oh, we have had that in the record. We don't want to bother with Mr. Stanek and his family.

Mr. Ransom: I want to bring out his relation to that plant.

The Master: We have that.

Mr. Ransom: Are you sure of that?

The Master: I am quite sure that we have all about Mr. Stanek and what his work is.

3251 He is the man that occupied that little building on the corner.

Q. Mr. Alrich, you were asked at page 872 of the record concerning the presence in the yard of the stable in 21st Street of a wagon bearing the name Huyler, and also of a truck bearing the name Farley. Have you ascertained the facts regarding the presence of one or both of those trucks in that yard?

Mr. O'Brien: Your Honor, the testimony does not show that the witness was there on the same day. I do not think this is proper redirect.

3252 The Master: I am inclined to agree with Mr. O'Brien.

Q. Have you since been at this yard, at this stable?

Mr. O'Brien: I make the further objection to the question, your Honor, that the testimony of the witness today shows that that property is leased to the National Coke Company.

The Master: The other objection I sustained. There is a new question.

Q. The question is, have you been at this yard 3253
nd stable since you testified and were interrogated
t page 872 of the record?

A. I have been.

Q. When were you there?

A. I was there last Friday, and also on Satur-
lay.

Q. Did you see the Farley truck and the Huyler
ruck referred to?

Mr. O'Brien: I make the same objection.

A. I did.

The Master: Well, he says he saw it there.

Mr. Hayward: If your Honor please, I do 3254
not want to take a lot of time her on recross examination of this witness. May I call your attention to something and we will get it straightened out as we go along, as bearing on the value which your Honor gives to these papers here with which he refreshes his recollection.

Mr. Ransom: That has no bearing.

Mr. Hayward: It has a bearing.

The Master: On page 910, referring to this building, I asked him:

By the Master:

"Q. When was it built, don't you know? A. I 3255
hink it was 1916 or 1917 (consulting paper). Here
find it, in 1918—finished 1918, $294,718.47.

"Q. When was it begun, do you know? A. In
916 as I remember."

Mr. Hayward: Now he consults the paper and finds it was finished in 1917.

The Witness: Didn't I so testify?

Mr. Hayward: No.

The Master: I find this on page 910:

3256 "Q. This building in West 57th Street, between Broadway and Seventh Avenue, was built during war time, wasn't it?

"The Master: The record speaks for itself, and the dates. We will take judicial notice of the war time period. How long will it take you to find that? It took you some time to find the other.

"The Witness: Simply to look at this sheet here.

"By the Master:

"Q. When was it built, don't you know? A. I
3257 think it was 1916 or 1917 (consulting paper). Here I find it, in 1918—finished 1918, $294,718.47."

Mr. Hayward: Now your Honor, this afternoon, unless I am mistaken about the building, he testified——

The Master: I still seem to be asking questions here:

"Q. So that its construction extended over the period from April 6, 1917? A. It did.

"Q. To November 11, 1918,—or it ran into the year 1918? A. It did."

Now, what is your point?

Mr. Hayward: My point is that he just got
3258 through saying this afternoon, after refreshing his recollection from the same or some other paper, that the building was finished in March, 1917.

Mr. Ransom: He has not said that all the work in that place was finished in April, 1917.

Mr. Hayward: The Master this afternoon asked him when the building was completed and he said March, 1917.

Mr. Chambers: He said March 15, 1917. 3259

Mr. Hayward: I want to get him to say finally which he means.

By the Master:

Q. Mr. Alrich, there does seem to be some confusion in this record as to the date when this 57th street building was finished. When do you say it was finished?

A. I don't know of any confusion there is in the record. Col. Hayward——

Q. Well, there is some confusion in my mind then. When was it finished?

A. The building was begun in September, 1916, 3260
the contract being dated September 22d. We took possession in April, 1917, but there was work going on after that date, work contracted for in September, 1916.

Q. What kind of work?

A. Interior work largely.

Q. When was that finished?

A. Some of the payments, about $15,000, only, ran over January 1, 1918. I did not state in answer to Judge Ransom's questions a few moments ago that it was finished in April, 1917.

Mr. Hayward: You said it was March, 1918.

The Witness: I said that was the contract 3261
date for the completion.

The Master: Yes, he said that was the contract date for completion. I understood him to say they went into possession in April, 1917.

The Witness: They did not finish it at the contract date.

Q. Did you go into possession in April, 1917?

A. We did.

3262 Q. So that the fact is that you went into possession in 1917, and work continued there during the balance of that year and final payments were not made until 1918?

A. Yes. There were $14,000 paid after January 1, 1918.

By Mr. O'Brien:

Q. What do you mean when you say you went into possession? Do you mean you used it for office purposes?

A. I mean just exactly that. The superintendent moved in and hung up his hat.

3263 Mr. O'Brien: Now, your Honor, if it was just a case of the hat there we ought to know it.

By Mr. Ransom:

Q. To what extent was their occupancy in April, 1917, to what extent did you move in and use it?

A. I went there at that time and looked it over, and they had temporary desks back of the back partition, and the superintendent had moved in his staff there and his clerks. The workmen were still working in the basement and upstairs, but the ground floor, the main office room had been made available for office use.

Q. Where had this branch formerly been located?

3264 A. 112 West 42d street. That is the south side of 42d street, just west of Sixth avenue.

Q. Was that a property owned or leased as an office by the complainant?

A. It was leased from the McCreery Realty Company.

Q. And was the staff and records of the 42d street office moved to this 57th street branch at this time?

Mr. O'Brien: Just a minute, your Honor. I

object to it on the ground first it is not redirect; 3265
secondly, on the ground that the question is leading.

The Master: No, it is not a leading question. I will allow it.

A. I am not sure that I understood the question. The removal took place in April, 1917.

Mr. O'Brien: What removal took place then?

The Master: Do not answer that question.

Mr. O'Brien: Your Honor, let us understand this.

The Master: I hope you understand my ruling that I won't let you ask questions until 3266
Judge Ransom is through. You might just as well understand it now as any other time.

Q. I was interrogating you regarding what you found with respect to the Farley Truck and the Huyler Truck to which reference has been made, at the stable. What did you find on the occasion of your last visit?

The Master: I do not think I will allow that —what he found.

Mr. O'Brien: Same objection, your Honor.

Mr. Ransom: May he state the facts?

By the Master:

Q. Did you see a Farley truck there? 3267

A. I did.

Q. Did you see a Huyler truck there?

A. I saw a truck belonging to Farley, but Huyler's name on it.

Mr. O'Brien: Same objection, your Honor.

Q. How did they come there? Do you know anything about it?

A. I do.

3274 1918, this building was occupied without lighting fixtures and without water closet accommodations?

The Master: No, he said they had temporary fixtures in there from the start.

Mr. O'Brien: I recall the second last answer was, your Honor, that from that time they had the water closet fixtures, and not before, and I want to prove as remembered by the witness.

Q. What is the fact, Mr. Alrich?

A. I meant what I said, that they had temporary lighting fixtures, as I remember, and they com-
3275 pleted the toilet rooms and other equipment in the basement after they had moved in.

Q. Was there a final certificate given by the Building Department for a completed building in April, 1917?

A. A final certificate; to whom; to us? We did not ask them for any.

Q. To the complainant.

A. We did not care what they thought about it. We did not ask them for any.

Q. That is your attitude with respect to the City Departments, is it?

A. Why, in regard to the matters where such cer-
3276 tificates are not issued. We did not ask them.

The Master: That is enough on that. There is not any proof before me that any final certificate is necessary in this kind of a building, nor do I from my knowledge of the building laws know that there is such a certificate required. There is for tenement houses.

Mr. O'Brien: Well, we won't stop on that, your Honor.

Q. There are elevators in this building, are there not, Mr. Witness? 3277

A. There are.

Q. Was this work done after April done by the gas company or by the George A. Fuller Company?

A. By the George A. Fuller Company under its contract dated September——

By the Master:

Q. All of this interior work?

A. Was under the contract with the George A. Fuller Company.

By Mr. O'Brien:

Q. Didn't you state in answer to Judge Ransom's question that the work under the contract was completed in April? 3278

A. I did not, and you probably know that I did not, Mr. O'Brien.

The Master: He said that was the date under the contract on which it was required to be completed.

Mr. Ransom: The 15th of March.

The Master: The 15th of March.

Q. Were there any liquidated damages or penalties prescribed by the contract?

A. I do not recall the terms of the contract. It was quite a long one. 3279

Q. Do you recall whether that was one of the terms?

A. I do not recall, no.

Q. Do you know whether the company did collect any damages for the failure, on the part of the company, the contracting company, to finish?

A. The facts relating to the adjustments made at the end are not in my memory now.

Q. Can you state whether or not——

3280 The Master: Aren't you assuming, Mr O'Brien, that there was a failure of perform ance on the part of the Fuller Company?— Because it was not finished on the 15th o March, which may not be true at all.

Mr. O'Brien: What?

The Master: You are assuming in your que tion that there was a failure of performance o the part of the Fuller Company, which may n be true at all.

Mr. O'Brien: I understood that from Judg Ransom they were required to finish under th contract at a certain time.

3281 The Master: I can see how the contra should have been finished by the 15th of Marc subject to strikes that may not have been for seen, and there may have been a good excu why they did not finish until later.

Mr. Ransom: All I asked for was the co tract date.

Q. Mr. Alrich, do you know who the directors a of the complainant company?

Mr. Ransom: I object to the question as i material and incompetent from this witness.

The Master: I will sustain the objection.

3282 Mr. O'Brien: Your Honor, it is perfec proper to find out from this witness somethi about the company.

The Master: Objection sustained. It is n cross-examination of anything asked by Juc Ransom on his redirect.

Mr. Ransom: I am willing to put in a l now, if you wish.

The Master: Wait a minute until this w ness is through, then you can put it in if

want to. Now, I am looking for a cross-exami- 3283
nation on matters brought out on redirect.

Mr. O'Brien: I am talking about this building and relation of the complainant with the George A. Fuller Company.

The Master: Next question.

Q. Is there any director of the complainant company, if you know, a director of the George A. Fuller Company?

The Master: The question is not allowed. Exception to Mr. O'Brien.

Mr. O'Brien: Will counsel show me a list of the directors?

Mr. Ransom: I produce from the Annual 3284
Report of the company a list of the directors. This is the Annual Report of the company to the Commission, and I call your attention to page 7, which sets forth the list of directors, and which I shall be glad to place in evidence (handing to Mr. O'Brien). Counsel examines page 7 of the Annual Report. I offer to place in evidence that page if counsel desires it.

Mr. O'Brien: Will you read it into the record? You have no objection to reading it into the record?

The Master: I won't permit it at this time. 3285

Mr. O'Brien: With the consent of the complainant?

The Master: No, finish with this witness. Any further questions?

Q. Do you know whether Mr. Vanderlip is a director or officer in the George A. Fuller Company?

The Master: The question is ruled out; it is not allowed.

Mr. O'Brien: Exception.

3286 Q. You referred to page 774 of the record. You stated that a certain amount was expended for work done between 1905, as I understood it, and December 31st, 1918, at the 14th Street station. Will you state how that amount was made up?

A. I read it from a report made by Mr. W. Teele.

Mr. O'Brien: I move to strike out the answer as not responsive, your Honor.

The Master: Motion granted.

Mr. Ransom: Do you want the details of it?

Mr. O'Brien: I certainly do, every bit of the details.

Mr. Ransom: He is asking for the details.

3287 The Witness: It was made up from the construction accounts of the Consolidated Gas Company.

Q. Have you produced the original records for the material and the labor that was involved in that work in court?

A. I have not. You mean the vouchers?

Q. The vouchers, yes.

A. And ledgers? No, I have not.

Q. Was the work done entirely under your supervision?

A. Which work? The construction work?

3288 The Master: This work on which you testified or gave the figures.

Q. All of the work.

A. It was not entirely under my supervision, no.

Q. What was under your supervision and what under the supervision of somebody else?

Mr. Ransom: You mean as to 14th Street or in general?

Mr. O'Brien: 14th Street.

A. I could not answer that question without a 3289
long study of the field reports on the work and on analysis of all such work done there in this period of years.

Q. Are those reports still extant?

A. I cannot say. Some of them doubtless are.

Q. They are in the files of the company at 15th Street?

A. As far as they are still in existence they would be.

Q. Will you tell us the various items that were embraced within that amount?

A. I can. 3290

By the Master:

Q. Have you got a tabulation there of it?

A. I have.

Q. Have you got a copy of it?

A. I have.

Mr. O'Brien: Your Honor, I at this time ask the counsel to produce the original vouchers covering this work.

The Master: Wait a minute; one thing at a time. Have you a copy of it there?

The Witness: Yes, sir.

The Master: Give it to counsel for the other side. 3291

Mr. Ransom: They have had it for weeks and months.

Mr. O'Brien: That tabulation is not what we want; and counsel knows it is not what we want.

The Master: The witness has referred to a paper on the cover of which is "Consolidated Gas Company, Additions to the Manufacturing

3292 Plant and Equipment, January 1, 1906—December 31, 1918", and at the bottom of it, "Patterson, Teele and Dennis, Accountants and Auditors, New York and Boston, No. 8213". Have you got a copy of that, Mr. O'Brien?

Mr. O'Brien: I assume that that has been sent to the defendants, or something like that has been received, yes.

Mr. Ransom: Sent on the 19th of May.

The Master: You have a copy of it?

Mr. O'Brien: I assume we have a copy of it, but that is not what I am asking for.

3293 Mr. Chambers: June 17th to us.

The Master: Mr. Chambers states that he has a copy received June 17th. Colonel Hayward, have you got a copy?

Mr. Hayward: Yes.

Mr. Ransom: I think Mr. Chambers is in error.

Mr. Chambers: No, sir.

The Master: I am not going to have the witness repeat these items into the record, on the ground that a copy is in the possession of counsel.

3294 Mr. O'Brien: Counsel must know, your Honor, that I do not refer to that. We are not going to take figures made up by some accountant as the proof that is necessary in this case. I am asking for the detailed figures, and I am going to insist on their being produced.

The Master: Mr. O'Brien, I am not now ruling as to whether they will make out a case or will not ake out a case in this way. I am ruling that you asked the witness on

the stand whether a certain figure would 3295
cover the cost of construction. On redirect Mr. Ransom has been permitted to ask the exact figures, the witness testifying that he knows. Now he has testified that his recollection has been refreshed by this report to which I have referred. You have asked him for the items making up that total, to which he testified. He was about to read from this report or Company's statement. That I won't let him do, upon the ground that you have all those items. Now, if you have a point to the effect that those items are not com- 3296
plete, are not satisfactory proof, we will have to proceed in some other form; but I will not let this witness proceed to read of all the items from this paper.

By the Master:

Q. Your testimony is, I understand it, Mr. Alrich, that the total figure is the total of the items shown on this report of which counsel have copies?

A. That is correct.

Mr. Ransom: May I have that marked for identification?

The Master: Yes.

Mr. O'Brien: Are you marking the whole 3297
paper now, or asking that the book be marked?

The Master: Yes, I will mark anything in the world for identification.

Mr. O'Brien: I am asking whether it is covering a page, or the whole thing.

Mr. Ransom: The whole report.

Marked Complainant's Exhibit No. 185 for identification, of this date.

3298 The Master: The paper to which I have been referring in my statements is now marked Complainant's Exhibit No. 185 for identification.

Mr. Ransom: The complainant would be entirely willing to have those items placed on the record.

The Master: Don't you state what the complainant is willing to do, Mr. Ransom. The complainant has a burden to carry here, and they have got to carry that burden. Don't tell us what they have got to do; I know what they have got to do.

3299 By Mr. O'Brien:

Q. Mr. Alrich, do you know Mr. Patterson, of Patterson, Teele & Dennis?

A. I believe he is dead.

Q. I did not ask you whether he is dead or living?

A. I do not know anybody that is dead, Mr. O'Brien.

Q. Did you know the man when he was living?

A. No.

Q. Do you know Mr. Teele of this firm?

A. Very well.

3300 Q. Is he a resident of New York?

A. He is.

Q. Do you know Mr. Dennis?

A. I do not.

Q. Do you know personally how the amount of $112,056.05 is made up?

A. I do.

Q. Did you formulate the items that made up that total?

A. I don't know that I understand what you 3301
mean by asking me if I formulated them. When Mr. Teele was making up the statement I collaborated with him on the collection and identification of the items.

Q. Have you got the records from which these figures were made up?

A. You mean here with me?

Mr. O'Brien: Now, don't ask me any foolish questions, Mr. Alrich. I will appeal to the Master to censure you. I have stood that long enough.

The Witness: What is the question? 3302

Mr. O'Brien: Your Honor, I think there is some respect due counsel for the defendants, and I think they ought.

The Master: I will tell you, Mr. O'Brien, as I told you many times before. Many of your questions are framed in the same way as the answer you get.

Mr. O'Brien: He need not answer that way. It is flippantly, and it is insulting.

The Master: No, I do not think you have any right to assume that. You insisted upon him having drawings in Court the other day. He has a right to know whether you mean in 3303
court or not. Have you got them in court?

Mr. O'Brien: He has already answered a question which indicated they were not in court.

The Master: Then you should have framed your question more accurately.

3304 By the Master:

Q. Are there vouchers, supporting figures and entries available?

A. They are in the general office of the company; they are not here.

Q. Then they are available?

A. They are.

By Mr. O'Brien:

Q. Will you produce them to-morrow?

A. I will refer you to counsel.

The Master: Do not answer that question.

Q. Have you got the time books that cover the
3305 work done on the foundation referred to as item of $3,724.55?

A. I don't understand what you mean by the time books.

The Master: Is there something in the correspondence about time book or time sheets?

The Witness: Pay rolls.

The Master: Pay-roll sheets.

Mr. O'Brien: I did not ask the witness about pay-roll sheets, your Honor. He knows what I mean when I ask him about the time book.

The Master: Well, let me see if I can't find out.

3306 Mr. O'Brien: And I am going to insist upon a direct answer.

The Master: Are you referring to an entry on the first page?

The Witness: Yes, the first item.

The Master: The first item, foundation, Mr. O'Brien?

Mr. O'Brien: I press the question and ask the witness if he has got the time books covering the work done on that item.

The Master: I am pressing a question, I 3307
want to know what it is you mean.

Mr. O'Brien: I mean the item $3,724.55.

The Master: Who says that is for labor?

Mr. O'Brien: I asked him if he had the time books covering the labor in that item.

The Master: Who says there is any labor in that item?

Mr. O'Brien: Well, I will go back and ask the question:

Q. Does that cover any labor or any materials, or both?

A. It covers both labor and material.

Q. Have you got the time books that cover the 3308
time of the men whose labor was furnished in connection with that disbursement?

The Master: Well, now, one minute. Were there any time books?

The Witness: I don't recall here just how the time on that work was originally collected in the field, whether it was on sheets or in books, or how.

The Master: Was there a time record?

The Witness: There was a time record.

The Master: Well, is that available?

The Witness: I believe it is. It went clear 3309
back in working up these figures.

Q. Did that item of $3,724.55 include some of your labor?

A. I do not recall.

Q. Do you know what the amount is included in that item of $3,724.55 which covers the time that you put in in connection with that work?

A. No, I don't remember.

3310 Q. Is there a way of your finding out whether it does or not

A. Why, yes.

Q. The records in your office would refresh your memory on that?

A. The records would tell any direct charge of my time against that work.

Q. And those records are available, are they?

A. They are.

Q. And could be produced if you are directed by counsel to produce them?

A. I refer you to counsel on that.

3311 Mr. Ransom: This might give you what you want (indicating).

Mr. O'Brien: Well, I would rather find it in my own way.

Mr. Ransom: Yes, but you won't find it here.

Q. Now, could you say what portion of that amount $3,724.55 covers material?

A. I cannot say without the supporting data.

Q. Can you say how much of that amount is taken to cover what is generally understood as overhead charges?

A. I can say.

Q. What is that proportion?

3312 A. Zero.

Q. Zero?

A. Zero.

Q. Then we are to understand that there is nothing in the shape of engineering——

The Master: (Interrupting) Oh, no, not at all.

Q. (Continuing.) Rent of offices?

A. No, sir.

Q. And the usual items that are understood to 3313
be embraced in the term overhead, included in that amount?

A. Nothing of that character is in the $3,724.55.

Q. Was all of this expenditure made directly to employes of the company, or was part of that work let out on contract?

A. I haven't all the facts of this extensive statement in mind.

Q. I am talking now about $3,724.55?

A. I don't know.

Q. Not about the whole page?

A. I don't remember.

Q. Will you be able to determine that by con- 3314
sulting the records of the office?

A. Most surely.

Q. Can you state who did the excavating for this particular item?

A. If it was a contract and not done by the company's labor, it was done by Richard Deeves & Son.

The Master: But you don't know?

The Witness: I don't recall at this time.

Q. Did Mr. L. Deeves do excavating?

A. He did, when he had a contract for such work.

Q. Do you recall whether Mr. Deeves' practice 3315
in doing work for the complainant company was to let out the excavating work to a subcontractor?

A. I do recall.

Q. What was his practice?

A. To do it with his own men and labor.

Q. Can you give us the various items of material which entered into this particular item of $3,724.55?

3316 A. I cannot now.

Q. But the papers and the records in the files of the company would show what those amounts are?

A. To the last penny.

Q. And they have been preserved?

A. They have.

Q. Was the material used there something entirely or in part made up of material which the company had on hand for a number of years, or was it purchased directly for this particular job?

A. It was all new construction.

Q. By that, do you mean to indicate that it was

3317 new material?

A. I do.

Q. Purchased directly for this particular job?

A. Either that or purchased in wholesale purchases to cover various operations going on at that time.

Q. Was that the custom of the company?

A. Every time.

Q. And you have in your office the records of purchases made in wholesale in the manner described?

A. We have.

Q. Well, what did this particular item refer to,

3318 what particular part of the station or plant?

A. That item refers to the boiler house located on Block 989, shown by sheet 3, and is in the middle of the block between 15th and 16th Streets just west of the easterly boundary of the company's property.

Q. That boiler house is enclosed with the governor house or next to it?

A. It is north to it with a space between the 3319
two buildings.

Q. And was work done on the governor house at the same time?

A. The work on the governor house was started the year before, and my present impression is that the boiler house was not started until the governor house was either completed or substantially completed. Now, I am speaking without a memorandum, after a lapse of 13 or 14 years.

Q. Well, you have refreshed your memory lately, haven't you?

A. As to the exact dates of the different phases 3320
of this work?

Q. Yes.

A. Of course, it came up in a way in the compilation of this statement?

Q. That is what I mean, yes, you refreshed your memory as to the date of erection of the governor house, when you went over this with Mr. Teele?

A. Oh, yes.

Q. By the way, was that with Mr. Teele or some man employed by him that you went over these figures?

A. Mr. Teele personally.

Q. Was all of the relations between you and the 3321
firm of Patterson, Teele & Dennis directly with Mr. Teele or with some of his employees?

A. With Mr. Teele.

Q. Well now, this boiler house is used partly to pump gas, is it not?

A. The boiler house?

The Master: We have fully covered the purpose of it.

3322 Mr. O'Brien: What is that, your Honor?

The Master: We have fully covered the pur
pose of it.

Mr. O'Brien: I know, but this will be quite
crucial in this case, your Honor.

The Master: Go ahead.

Mr. O'Brien: Because this property and thi
expenditure, our contention would be, has bee
made necessary to do work for other companies

The Master: Go ahead.

Mr. O'Brien: And they have got to separat
the amount.

3323 The Master: Go ahead, I will see what hap
pens.

Q. Now, these boilers are used partly for the pro
ducing of power to pump gas, are they not?

A. They are.

Q. And the mains that run into that governo
house which is used in conjunction with the boiler
in the boiler house, comes from other companies i
part, does it not?

A. I don't understand the question.

Q. Read the question.

(The question was read by the reporter.)

Mr. Ransom: I object to that as not prope
3324 cross-examination and not in any way bearin
on the question here.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: The only answer I can give t
that is the one that I gave before, that the
is a connection between that building and th
New Amsterdam holder.

Q. And the boilers you refer to are used in co

junction with the handling of gas that comes from 3325
or goes to the New Amsterdam Gas Company

A. I don't know anything about the handling of the gas.

Q. Well, you know that the New Amsterdam mains run in there, do you not?

A. I know that that holder has a connection on the system of piping in that building.

Q. And you know that the Mutual Gas Company mains run into that governor house, do you not?

A. I don't know it, no.

Q. You never heard that?

A. I never heard it, that I recall. I may have 3326
read it but I do not recall it. I do not know it, and I am not familiar.

Q. Will you say that you never heard it?

A. No, I won't say that I never heard it.

Q. Well, now, do you know of any other mains that run into that governor house?

The Master: One moment. I am going to rule that you are now back into a field that I have ruled against.

Mr. O'Brien: Well, your Honor——

The Master: I am going to permit you as wide a latitude as is necessary to cross-examine on the figures, the exact figures given by this 3327
witness in reply to Judge Ransom. The argument as to the use to which these various properties are put will have to be postponed until later on.

Mr. O'Brien: But here we have the witness who says—who has testified today and one other day that he was on the stand that he had drawn the plans for the governor house, for

3328 the foundation, and that he is cognizant of just where these mains came from.

The Master: I think that is perfectly clear.

Mr. O'Brien: And I will simply move for the elimination of these amounts, when I get through with this part of the witness's testimony.

The Master: I think that is the time to move.

Mr. O'Brien: And it is perfectly proper now to ask him, it is directly in point, what he knows about the uses of these boilers and the uses of this governor house.

3329 The Master: No, I will limit your cross-examination to the testimony now given on redirect, as to the exact cost and as to the uses, we are past that stage.

Mr. O'Brien: The material that entered into this item of—I take an exception, of course. The stenographer understands I am excepting to all the rulings.

The Master: Yes.

Mr. Ransom: Did counsel announce that?

Mr. O'Brien: It has been announced many times.

The Master: So there is no misunderstand-
3330 ing, I will repeat it again, that if whenever counsel on either side present a matter to the court, and the court makes a ruling, if by any oversight counsel has failed to ask an exception and the court has not allowed an exception, an exception will be deemed allowed? So, as to every ruling of the court an exception is allowed and so stated in the record.

Q. Do you know, Mr. Alrich, or could you approx-

imate the amount of the proportions of this item 3331
used or spent on material, and the proportions spent on labor?

A. You mean now sitting here in the witness chair, no.

Q. But those figures could be readily gotten by you after consulting your records?

The Master: What figures are we referring to?

Mr. O'Brien: The proportions for material and labor.

The Witness: Yes, and I have already had them, they have passed through my hands. 3332

The Master: But the answer is they are available?

The Witness: Yes, they are available.

The Master: So that counsel can check it up?

The Witness:: Yes, every penny.

Mr. O'Brien: No, but so that the witness can prove them, your Honor, and be catechised as to that.

Q. Can you state when this work covered by this item was finished?

A. No, I cannot from the memorandum before me. 3333

Q. Can you state when it was begun?

A. I can give the year, 1906.

Q. You are sure it was not in 1905.

A. From recollection, no work was done on it in 1905.

Q. Are you sure of that?

A. I am quite sure. If there was any work done

3334 on that building in 1905, it was merely the draw
ings.

The Master: The preliminary work.

Q. That was work, wasn't it?

A. Yes.

The Master: Don't answer that.

Q. That was drawings done by your department

A. Yes.

Q. Done under you or by you or under you
supervision?

A. Correct. I had immediate charge of the draw
ings of that building.

3335 Q. And the item is included for such portion
your time and your subordinate's time as was use
on such drawings, is included in this $3,724.55?

The Master: He said it was not.

Mr. O'Brien: Well, he is going to change h
mind if he did; I can tell that by his attitud

The Witness: I am not changing my mind.
said I don't remember whether any of my tim
was charged in there. That was the questio
asked me.

Q. Well, was any—does this item of $3,724.5
include any of your subordinates' time which wa
taken up in making drawings for this work in 1905

3336 A. So far as I remember, it would include som
of the time of the ordinary draftsmen charged d
rectly against the job.

Q. When you were asked by Judge Ransom as t
these several items, was the date that you unde
stood marked the beginning of the period covered b
these figures December 31, 1905, or January 1, 1905

A. December 31, 1905, just what he said.

Q. Then your statement will have to be amende

then, so far as the drawings are concerned, for this particular item? 3337

A. Oh, no, oh, no. If there was any time charged against drawings in 1905, it would not be in this figure.

Q. You are sure of that?

A. Why, it certainly would not. This begins with December 31, 1905.

Q. Yes.

A. And has no 1905 expenditures in it.

Q. Then we are to understand this does not include any work done prior to December 31, 1905?

A. And that is the absolute fact. 3338

Q. Well, now, you are getting into the domain of absolute confidence now.

A. Well, this should please you. You thought I was so vague before.

The Master: That is purely argumentative. I won't allow it.

Q. Well, what makes you so positive about that?

The Master: I won't allow that. It is quite apparent from the witness' statement that he sought to make up a statement which would exclude anything prior to January 1st, and that is why he is positive about it. Let's go ahead. 3339

Q. Did I understand you correctly to say that, in answer to a question asked by Judge Ransom, that this total of $112,056.05 did not include any engineering?

A. It does not include any of the account that we carry as engineering and superintendence.

Q. What is the account you carry under the term or title of engineering?

3340 A. And superintendence?

Q. Yes.

A. The supervisory staff of the construction department.

Q. Does that include you?

A. It does.

Q. Then are we to understand that none of this $112,056.05 includes your time?

A. I do not recall whether my salary at that date was charged direct or included with those of the supervisory staff. I do not recall, or whether it was divided.

3341 Q. Then to that extent you are not certain about the question as to whether or not this total of one hundred and twelve odd thousand dollars includes engineering?

A. I am certain that it includes none of the account that we carry as engineering and superintendence.

Q. You are in doubt, however, as to your engineering work, as to whether any——

A. As to whether any of my time was charged as draftsman's time on this particular work.

Q. It is possible that it was included in that way, and it is possible also that it was not?

3342 A. It is possible that some of my time for the year 1906 on this particular job was charged as draftsman's time.

Q. How about 1907; would the same answer hold?

A. I could not answer that without consulting memorandum.

Q. Well, that can be found out?

A. Oh, yes, it can be found out.

Q. And testified to later? 3343

A. Yes.

Q. Answer yes?

A. Yes.

Q. Now, in the face of your statement that this one hundred and twelve odd thousand dollars did not include any superintendence or engineering, how do you explain this item on the first page, "Superintendence, $655.29"?

Mr. Ransom: Referring now to what page of the exhibit?

Mr. O'Brien: The first page of exhibit 185 for identification. 3344

Mr. Ransom: Page 2 of that exhibit?

Mr. O'Brien: Yes, page 2.

Mr. Ransom: Well, it is so marked.

A. That is the immediate superintendents and the inspectors. It does not include the men that we carry, whose compensation we carry in the engineering and superintendence account. This is the direct superintendents, the foremen, and so forth.

Q. Well, now, tell me who they are. Who are those superintendents, or who is this superintendent; what are the employees, who are they, that are included under that item?

A. I do not recall. That was thirteen years ago. 3345

Q. Didn't you tell us here in the early part of your testimony that you supervised that construction work?

A. I supervised quite a lot of that construction work on this particular building.

Q. Then part of that item might cover you?

A. It may, but I don't think so.

3346 Q. Then who is the other individual, or who are the other individuals whom it may cover?

A. In—in this case it most probably refers to the field inspector looking after the work.

Q. You have then what are termed, I take it, field inspectors?

A. We do.

Q. And do you recall what they were paid at that time?

A. I do not.

Q. Did these men work under you?

A. They do at times.

3347 Q. I asked you what they did, not what they do to-day.

A. You mean on this particular building?

Q. On this particular job, were they under your direction?

A. They were.

Q. Didn't you say to us that you were there all of the time during that construction?

A. I did not.

Q. How often did you go there?

A. That is thirteen years ago; I don't remember.

Q. Can you recall whether you went there daily

3348 or twice a week or bi-weekly, or when?

A. I was there daily for much of the time while that building construction was going on. It was not far from the office, you know.

Q. Did it cover a period of more than three or four months?

A. I don't remember, but I think it would.

Q. Do you recall who the field inspector was?

A. I do not.

Q. Do you know whether he is still with the company? 3349

A. He is not.

Q. Was he sent there to look after Deeves and see whether Deeves was complying with his contract?

A. Yes, among other things.

Q. And he returned in reports for you, probably?

A. He did.

Q. And you have such reports?

A. I don't know whether those daily reports are still available. 3350

Q. Was there a daily report?

A. There was.

Q. Was there more than one inspector, field inspector?

A. On that particular job?

Q. Yes.

A. There was only one.

Q. Then you are not concerned whether or not this $655.29 includes more than the field inspectors' work?

A. No, I would have to look up the supporting data.

Q. Well, on the construction work of the company which is conducted under your supervision can you give us a fixed rule as to the meaning of the term "superintendence", as to what we may assume it includes? 3351

A. It includes the time of field inspectors paid by the week and charged directly against the jobs on which they are working. They cover more than one job. A man may have half a dozen or more

3352 jobs throughout the city that he has to cover in the course of a day. It depends on the magnitude of the jobs and their relative locations, and his time is apportioned on these different jobs. He makes out a daily ticket.

Q. He goes from one job to another?

A. Yes.

Q. You use him on construction work and you use him on repairs?

A. Not on repairs. That will be an exceptional case that he worked on a repair job, but in such case the time would be separated.

3353 Q. Do you mean you have a different class of field inspectors who take care of repair work?

A. No.

Q. Then what do you mean, that these field inspectors do cover repair work as well as new construction?

A. It could happen that a repair being made by the construction department would be covered by construction department inspectors. That situation could happen.

Q. Well, did it always happen?

A. I don't understand the question, did it always happen,—what always happen?

3354 Q. That repair work was done under your supervision, was is not?

A. In those cases where I was assigned to such work.

Q. Now, didn't you have under you a field inspector to report about that repair work?

A. Yes.

The Master: Mr. O'Brien, I think you and the witness are at cross purposes again.

By the Master:

Q. I get the impression, Mr. Alrich, from what you say, that there is a distinction in the handling of repair work and of construction work?

A. There is.

Q. The repair work comes under what department? A. The manufacturing department, except as far as repairs of a special nature may be assigned to the construction department.

Q. But as to ordinary repairs, the construction department does not have its inspectors on the job?

A. That is correct.

Q. The construction department does have inspectors on repair work when it happens to be some piece of unusual work?

A. That is correct, or work of a special character.

Q. That is what you mean when you have testified on several occasions here that it did not necessarily follow that construction inspectors were on repair work?

A. That is what I meant.

Mr. O'Brien: Now, let me get that right.

The Master: I thought I had, Mr. O'Brien.

Mr. O'Brien: Well, I am a little bit hazy about it. I would like to have it clarified.

The Master: I am getting hazy myself.

By Mr. O'Brien:

Q. Take the engine house up at 99th Street—you know the engine house at the 99th Street station?

A. I know it very well.

Q. It is an old building and needs pointing up?

A. Are you testifying or asking me a question?

Q. I am asking you a question, and don't you ask me any. If you sent a man up there, and that

building needed repairing on it, if it needed to be pointed up——

By the Master:

Q. Who would do that?

A. Why, the station superintendent might do such work himself, assuming that the building needed pointing. He may do it himself, with his own bricklayers.

Q. Do they have their own mechanics for that kind of work?

A. They do.

By Mr. O'Brien:

Q. What repair work is done under the supervision of men in the main office?

The Master: I think the witness has covered that subject. I suppose if they have to build a new wall or a new section of a building, or tear something down, and rebuild it, that is really new construction, and comes under your department.

The Witness: Yes.

By the Master:

Q. So that the line probably is to be drawn between strictly repair work, little patching up jobs, and new work?

A. Yes.

Q. Or anything of a substantial nature, that comes into the construction department?

A. Yes.

Q. And then you have your field inspectors on it?

A. Yes.

By Mr. O'Brien:

Q. And the field inspectors would go off and put in some time on that kind of work?

A. Yes, and it would be so charged. 3361
Q. The time would be divided?
A. Yes.
Q. You would have a report and it would be harged up to several different jobs?
A. Yes.
Q. And show up in the books?
A. Yes.
Q. I think you said you don't remember who was e field inspector on this work?
A. No, I was trying to think. I don't remember ow, we have had so many, I don't remember.
Q. You have had a good many? 3362
A. Yes.
Q. Coming and going?
A. Yes.
Q. Why?

The Master: You need not answer that. Some die. Some get drunk, some get married and some leave, and some don't feel like working. Don't let us waste time on that. Of course they come and go.

Mr. O'Brien: Your Honor, the witness evidently wants to read into the record there some statement which would indicate rather a nomadic class of employes. 3363

Q. Is that right?

The Master: Don't answer that question.

Q. Then you can produce the items that make p this $8655.29 can you if counsel directs it?

The Master: Let us see if we can cut this short.

By the Master:

3364 Q. Can you as to any one of these items separate labor from material?

A. Well, I think it is improbable, unless there should be some special circumstances.

Mr. O'Brien: He is contradicting himself, he has stated that the record is available.

The Master: I am talking about this exhibit for identification.

Q. What I want to know is whether by looking at them you can recall the amount spent for labor or material or work of various kinds?

A. Not throughout. There might be instances
3365 about some one item that I could remember and identify.

Q. Now, proposition No. 2 is, Every one of these statements in here is supported by vouchers and book entries indicating the particular account applicable to various things?

A. Yes, sir, every penny.

Q. So that what you have said to Mr. O'Brien with reference to one or two items here applies namely that you have to see the original voucher or original book entries?

A. That is correct.

By Mr. O'Brien:

3366 Q. Now, on this second item of $8,888.84, covering buildings, does that refer particularly or solely to the boiler house and governor house?

A. It refers solely to the boiler house and contents, not the governor house. Note the caption No. 1.

By the Master:

Q. Buildings would not refer to contents would it?

A. Boiler house and contents. 3367

Q. This sub-division, "Buildings" would not refer to contents?

A. I am not referring to the governor house building, only the boiler house building.

Q. The first thing is "Foundation"?

A. Yes.

Q. That means the foundations of the boiler house building?

A. Yes.

Q. Then the word "building" means the boiler house building?

A. Yes. 3368

Q. And the word "blowers", refers to blowers in the boiler house?

A. Yes.

Q. And "breeching" means the breeching in the boiler house?

A. Yes.

Q. And so on down?

A. Yes.

Q. It explains itself?

A. It does.

By Mr. O'Brien:

Q. Now, we will assume then that the $8,888.84 just covers the brick structure—— 3369

The Master: Just a moment, Mr. O'Brien, to interrupt you. Let us assume in the trial of this case that the Master has practiced law for 25 years or more; has had to deal with building construction; knows a map when he sees it; knows a statement of building cost when he sees it—and you don't have to waste time in trying to find out whether the caption

3370 "building" under "boiler house and contents" refers to anything else than building.

Mr. O'Brien: I know your Honor is acquainted with building matters, but I want to say two things. One of them is this: We are making a record here, and from what the District Judge said when he made the appointment of you as Master, we are to assume that this case is going to the United States Supreme Court.

The Master: Yes, and you will assume also that there will be as complete a record as ever

3371 went up, but not a wasteful record.

Mr. O'Brien: Your Honor will see that we are talking through this record to the higher court. That is the first statement. The second is that I want to find out a good many things about that word "buildings" there, and I think I know something about building. I want to know whether it means the brick work in the foundation, whether it includes the understructure which sustains the walls, whether it includes the brick work of the boilers.

The Master: Very well, ask him that.

3372 Q. Mr. Alrich, what does this item $8,888.84 include?

A. Nothing but the building, the walls, the windows and the roof.

By the Master:

Q. And the floors? Are there any floors to that building?

A. There is a brick floor in the building, and that is doubtless included.

Q. It includes everything above the foundations? 3373

A. Yes, sir.

Q. Does it include the first tier of beams?

Mr. O'Brien: It is just a one-story structure.

The Witness: It has a masonry floor.

Q. Does it include the masonry floor?

A. It is my present belief that it does; I would have to refresh my memory.

By Mr. O'Brien:

Q. You are not certain whether it does or not?

A. No, I am not certain. That is the proper place to charge it ordinarily. 3374

Q. Does it include the brick work about the boilers?

A. It does not.

Q. Does the next item include the brick work surrounding the boilers?

A. It does.

Q. Is that customary in contract work for setting up boilers, to include the brick work?

A. Yes, sir. There have been very few cases where we have bought boilers that the contractor did not complete the boiler with the setting. There have been a few exceptions to that.

Q. Do you remember where they were? 3375

By the Master:

Q. Mr. Alrich, will the vouchers supporting this item indicate whether the contractor built the foundation or setting?

A. He did not build the foundation.

Q. But the supporting vouchers and entries will show that, will they not?

A. They will, absolutely.

3376 By Mr. O'Brien:

Q. Well, we can pass over the item there and assume that the foundation for the boiler structure were built by the company and not by the Babcock & Wilcox Company?

A. They did not build the foundation, that is, Babcock & Wilcox did not build the foundation.

Q. Now, are they Babcock & Wilcox boilers, or are they of the Babcock & Wilcox type?

A. They are Babcock & Wilcox boilers, built by the Babcock & Wilcox Company of Bayonne.

Q. Does this amount of $7,477.80 represent the price of that company to you for the completed
3377 work, or is there added to the contract price any additional amounts to cover supervision, engineering, superintendence, or any overhead element of expense?

A. There are no items of engineering and superintendence entering into that figure.

By the Master:

Q. Do they enter into any of these figures here?

A. Only as I have testified, such time of draftsmen as might be charged direct.

By Mr. O'Brien:

Q. Did you do any draftmanship work in con-
3378 nection with that boiler house?

A. It is 13 years ago, I don't remember; I had much to do with it.

The Master: Mr. Alrich, I don't want to have you tell us again how many years ago it was. Just answer the question. We know.

A. I don't remember.

Q. Will the records indicate that?

The Master: He need not answer that. He

has stated fully in answer to my questions that 3379
the records will indicate all these things that you are trying to get at here.

Let me say this, Mr. O'Brien, if I may. It may save some time. I have allowed this witness to testify that his recollection is that the job cost $112,000., based upon a report given to him by accountants, having in mind the fact that he cannot possibly know the first blessed thing about it at this time except as he depends upon the supporting vouchers. I am going to take his statement that the total cost was $112,000., because that is the best of his recollection, 3380
based upon reports, and as he looks at this report he is prepared to swear on his oath that that figure is correct, having worked on it. Now, that is as far as his testimony goes with me. So far as the details of it are concerned, it would require very slight evidence to offset it, and if the complainant is willing to stand upon that testimony as it is, it is not very strong evidence. I think you are wasting time on this kind of cross-examination. I am not going to stop you if you want to go ahead with it.

Mr. O'Brien: I don't quite understand what 3381
you said. Do I understand that the statement of the witness, refreshed by this document, that this has any probative force?

The Master: It has some probative force, but very little.

Mr. O'Brien: I want to say that I will defer cross-examination on this matter if it is going to be put in through some other witness.

3382 The Master: If you were to spend a month on this, Mr. O'Brien you could develop only the point that is already clear in my mind, that his testimony is of very little value without the supporting vouchers. I am telling you frankly, because I know you don't want to waste time any more than I do, but you don't accomplish anything. The minute you bring out the fact that I tried to help you bring out, that his statement is only based upon a situation thirteen years old, that his figures are given because they are taken from the vouchers, and he having worked on this report, and taking his state-
3383 ment for what it is worth, and you will not make it any stronger or any weaker by a month's cross-examination.

Mr. O'Brien: I have two things in mind. One is that your keenness sees through these things, and you can weigh them and give proper weight to the testimony. The other is that we have a record and we have got to think about what some other judge is going to think of the case. We have only one day in court.

The Master: I am not forgetting the higher court. What I am trying to make clear to you
3384 is this: I am assuming that I am no different from any other court in attempting to arrive at the facts. The minute this witness says it was $112,000, the question is, "How do you know" He says, "I worked on this report and looked at all the vouchers and book entries". His testimony is worth just that and no more. It cannot be worth any more to the higher court

than it is to me, and you can't destroy it any 3385
more than it is already destroyed.

Mr. O'Brien: Naturally, feeling my responsibility, I want to err on the side of proper caution.

The Master: All right, and I am going to allow you to err on that side, so long as it does not take too much time.

Mr. O'Brien: I don't want to take a chance, I want to be 100 per cent. cautious. I don't know what the court on appeal might think of the record, and of course to be perfectly candid and frank with the Master and the counsel on 3386
the other side, if they indicate that this branch of the case is going to be covered by other witnesses I will not waste the time of the witness and the Court on it now.

The Master: Judge Ransom, are you prepared to say whether you will produce the original vouchers in support of this statement?

Mr. Ransom: You mean down here?

The Master: Yes.

Mr. Ransom: I don't think I could answer that question at this time. There is a large quantity of them. We expect to prove our case in the best way. 3387

The Master: This exhibit for identification shows ledger references and ledger entries. Is there any reason why those should not be produced?

Mr. Ransom: They will be.

Mr. O'Brien: The production of the ledgers will not satisfy my demands or those of the

3388 other defendants. We are going to have these vouchers and they will be produced here.

The Master: Wait a minute. I am trying to see how far I am going to get a statement. Are you prepared to say, Judge Ransom, that the original books of account with the entries from time to time will be produced?

Mr. O'Brien: We shall be able, I think, to produce everything that your Honor feels it is necessary to produce in that respect. Of course there is an enormous quantity.

The Master: This is an enormous case. We are going to facilitate the taking of this proof, but we cannot eliminate all the proof in support of a statement. I say frankly to you now that the statement of this witness that it cost $112,000, unsupported by any vouchers or current books of account is not to my mind very strong.

3389

Mr. Ransom: I had not expected to go into that question with this witness at all in spite of his knowledge of those matters. I had expected to offer other proof through other witnesses with the necessary supporting documents.

3390 The Master: I am not going to require the plaintiff to bring every mechanic and prove every minute of time he spent.

Mr. O'Brien: I am going to make the record in this case as far as I am concerned, and they are going to prove their case. They are not going to prove it by putting in a ledger. I am going to insist, and counsel for the defendants, I know, agree with me, and are co-operating

with us to that extent—in insisting upon the 3391
original records. No ledger, no cash book and no journal will satisfy that demand. If that item of $3724 is made up partly of labor and partly of material, we are going to find out who the laborers were and how much time they put in there by properly authenticated documents.

The Master: Next question.

Mr. O'Brien: I suppose we can assume from what counsel said, your Honor, that he does not want to prove this part of the case by this witness. 3392

The Master: Judge Ransom does not assume anything.

Mr. O'Brien: Then I will go along my own way; taking advice from the enemy does not get us anywhere.

The Master: I will rule on your next question as you put it. Do not assume anything.

Q. You have here an item of $2380.70 for stack and bruching.

A. Breeching, b-r-e-e-c-h-i-n-g, that should be.

Q. Mr. Teele has that bruching, b-r-u-c-h-i-n-g.

The Master: That is a mistake. It should be breeching, b-r-e-e-c-h-i-n-g. 3393

Q. Was that work let out on contract?

A. It was.

Q. Did Bartlett-Hayward put it up?

A. They did not.

Q. What contractor erected the stack and the breeching?

A. I do not recall which one of three or four that have done that kind of work for us, did it.

3394 Q. You had three or four that you called on?

A. For doing that kind of work throughout the country. Probably more than four, half a dozen.

Q. Do you recall whether it was let after competitive bidding?

A. It was.

Q. What is the breeching?

A. The breeching is the box-like connection that extends from the flue of the boilers, usually in the rear of the boilers, and connects to the stack. It is the draft passage connecting the boilers to the stack.

3395 Q. Do you recall any of the details of the contract?

A. I do not now, at this time.

Q. Do they sell stacks of that kind like they sell holders, just the whole thing put in?

A. If I understand you, the contractors doing that kind of work, undertake to complete a stack erected.

Q. It was not then percentage work?

A. That stack was not, no. There was a lump sum contract.

Q. Was the work on the buildings, the former item we spoke about, and the foundations per-

3396 centage work?

A. My recollection is that was a lump sum contract. I have not the memoranda showing that. My remembrance is that it was a lump sum.

Q. Have you got the contract for these four items, the foundations, the boilers, the stack and breeching?

A. They are in the archives of the company.

Q. When was the work on the stack and breeching begun? 3397

A. Well, I cannot tell positively from this statement. I am sure it was begun in 1906. It is possible there may have been some payments in 1905.

Q. You think it was finished in 1907?

A. I don't recall the date of the completion. The statement shows some payments in 1907, but those might have been payments upon the completion of the work.

Q. What did this plant do for steam power before and while these structures were being erected?

The Master: The question is not allowed because it is not cross of matters brought out on redirect. We will confine ourselves to the items now—to this statement. 3398

Q. These boilers were not used in connection with the coal gas plant at 14th street, were they?

The Master: That question is not allowed.

Mr. O'Brien: Exception.

The Master: You have got to confine yourself now.

Mr. O'Brien: Your Honor must see that they have to connect it up with something that is in the complainant's manufacturing plant.

The Master: Don't you try to connect it up, but disconnect it. My ruling now is that you must confine your questions to items of cost of that construction and not use. 3399

Mr. O'Brien: Exception.

The Master: You need not worry about exceptions. They are allowed. Keep your mind on what you are after and do not worry about exceptions.

3400 Q. Do you know the dimensions of that stack?

A. I do not recall, no.

Q. Well, it is about as high as the holder, isn't it?

A. No, it is not near as high as the holder. It is just about 150 feet high.

The Master: How high is the holder?

The Witness: Which holder, your Honor, which holder is he asking me about?

Q. Which holder have you in mind?

A. Either one of them.

Q. Well, it is right here next to the New Amsterdam holder, isn't it?

3401 A. Yes.

By the Master:

Q. How high is that holder?

A. About 275 feet.

Q. Fully inflated?

A. Fully inflated. The top of the guide frame is about 275 feet above the foundation, and the foundation is probably ten feet below the——

By Mr. O'Brien:

Q. Are you sure that is 275 feet high?

A. I just make that statement, that I think it is 275 feet.

3402 By the Master:

Q. You say the stack is 150 feet high?

A. Yes.

By Mr. O'Brien:

Q. Isn't that a rather unusual or dangerous place to put a stack?

The Master: I do not care about that either. The question is not allowed. I do not care whether it is dangerous. The question now

did they spend that much money for these things? 3405

Mr. O'Brien: Well, the question is whether they spent it wisely, your Honor.

The Master: Not at this point. The question now is, did they spend the money?

Q. Did you design that particular location for the stack?

The Master: That is ruled out.

Mr. O'Brien: Exception.

Q. Was this next item for feed water heaters and pumps let out for competitive bidding?

A. It was as to the pumps, and probably was as to the feed water heater, but there are some special types of feed water heaters that sometimes make a particular one desirable for a particular use. 3404

The Master: We do not care anything about that.

Mr. O'Brien: I move to strike out that gratuitous remark.

The Master: Granted.

By the Master:

Q. Those feed pipes, are they——

A. Feed water and pumps.

Q. Were they let out at competitive bidding?

A. My recollection is they were on the pumps; I do not recall as to the heater. 3405

By Mr. O'Brien:

Q. Where were they located in the plant?

The Master: I won't allow that either. I am going to hold this now to the question of the cost.

Mr. O'Brien: Here we have a plant and three blocks are dormant, and the only thing alive

and going is this governor house and holder
I want to know whether this part of the plan
that is dormant, or whether it is in connectio
with the governor house.

The Master: All right, I will let you ask th
question.

A. What is the question?

Q. These feed water heater and pumps, where a
they located?

A. They are located in the boiler house, in co
nection with which statement they here appear.

By the Master:

Q. Which boiler house is it?

A. The boiler house between the holders in blo
989.

By Mr. O'Brien:

Q. And in what part of the boiler house are th
located?

The Master: I do not care anything abo
that. The question is not allowed. They
located where they are.

Q. Were they in use when you last visited
place?

The Master: That question is not allowed.

Mr. O'Brien: But, your Honor, it must
shown that they are now in use. These
additions to the plant.

The Master: Mr. O'Brien, this record
shows, I take it, almost beyond question, ev
particular building and the particular use
which it is being put, or lack of use, its av
ability or lack of availability.

Mr. O'Brien: No, I don't think counsel
tended to have the witness' statement of

properties, for instance, their machinery, their 3409
equipment, show as a complete inventory.

The Master: Oh, no.

Mr. O'Brien: Is that right, Judge Ransom? You do not confine the list of properties to the testimony given by the witness?

The Master: No, the point that I make is this, Mr. O'Brien. You have shown that certain particular plants are not making gas now, that certain structures are not actually operating now. The witness has identified the particular structure in which these fittings are, these appliances, and the record is complete 3410
enough as to the use that is being put of the material in that building. I am going to hold you to the question of the expenditures.

Mr. O'Brien: Of course, as we go along we may find something in here that is now out of use, your Honor.

The Master: I am going to rule that your examination must be confined to the question of expenditures and costs with this witness.

Mr. O'Brien: Exception.

Q. What time was that installed, and what contractor did the work, if any?

A. The question being as to the feed water heater 3411
and pumps?

Q. Yes.

A. I do not recall the make of the feed water heater or the pumps. They were installed by company's labor.

By the Master:

Q. Consolidated Gas Company's labor?

A. Yes.

3412 Q. When?

A. In 1906.

By Mr. O'Brien:

Q. And did you have charge of that work?

A. I did not have charge of the erection of th heater and the installing of the pumps. I did hav the laying out of the connections when the wor was designed.

Q. Does any part of the amount $4,433.26 inclu the labor of the company's employees expended o the installation of the heater and pumps?

A. I have not the details before me, but I belie that it does.

3413 Q. That is ascertainable by looking at the ori inal records?

A. It is, to the last penny.

Q. Is there any or some special man that is cu todian of records in the company's office?

A. I could not answer that question.

Q. Whose office would those contracts be ke in; yours?

A. No, not in my office. They wouldn't be pro ably in the files of the construction department.

By the Master:

Q. Where did you find all those vouchers th

3414 you prepared this report from?

Mr. O'Brien: But, your Honor——

The Master: I want to find out.

Mr. O'Brien: I do not think he ever h these vouchers and prepared this report.

Q. Did you have the vouchers before you wh you prepared the report?

A. When Mr. Teele was preparing it, he had the vouchers of the company.

Q. Where did he get them? 3415

A. From the offices of the company.

Q. Do you know what department?

A. The accounting department.

Q. Why do you say then, they are in the construction department?

A. He asked me about contracts; not vouchers.

The Master: I see.

By Mr. O'Brien:

Q. How do you know he had all the vouchers before him?

A. I have a pretty good idea.

Q. Well, you are guessing at it, aren't you; you 3416
just assume it from what?

A. I am not guessing.

The Master: He said he worked with him on it.

Mr. O'Brien: No, he did not, your Honor.

The Master: Didn't you?

Mr. O'Brien: He said that he collaborated with him on some matters.

By the Master:

Q. How far did you go with Mr. Teele in preparing that?

A. I assisted him in the identification and the 3417
collection of the items.

The Master: Of course, you have in mind, Mr. O'Brien, I have not received this paper in evidence. It is only marked for identification.

Mr. O'Brien: No, your Honor, but the amount is the thing with me, and I just want to have as we go along——

The Master: Well, you have the amount.

3418 Mr. Ransom: I did not ask for the amount; you did.

Mr. O'Brien: I put it in there, but——

Mr. Ransom: This is your witness, not mine.

By Mr. O'Brien:

Q. Were you present with Mr. Teele when he made up this list?

A. I collaborated with Mr. Teele when he made it up. I was with him many times.

Q. Will you swear that Mr. Teele had before him the original vouchers for this work?

A. He did.

3419 Q. The time books, the pay rolls of the company, the reports made by the engineers and by you to your superiors, and all the necessary items?

A. He had all of the necessary supporting data.

Mr. O'Brien: Your Honor, I move to strike that out.

The Master: He has answered your question.

Mr. O'Brien: No, he has not either.

The Master: I beg your pardon. If you had left out the word "necessary" it would be all right. I tried to stop you when you were going to ask him that.

3420 Q. When you say he had all the necessary data, what do you mean and what do you include within that term?

A. Ledgers, pay rolls, vouchers of various kinds. All the usual material that enters into a commercial transaction.

Q. Have you ever been in a rate case before?

The Master: The question is disallowed.

Mr. O'Brien: Then I move, your Honor, to 3421
strike out the answer as not responsive.

The Master: Motion denied.

Mr. O'Brien: When he says all the usual documents required in a commercial transaction.

The Master: Motion denied.

Q. What other documents did he have besides vouchers and ledgers?

A. He had pay rolls and cash books and all the usual accounting paraphernalia.

Q. Did he have the time records and time books?

A. I do not know what you mean by time books. 3422
You keep asking me about time books and I don't know what you mean.

Q. I don't know. You know, Mr. Alrich, and it does not make any difference whether it is a card or paper or a ticket, if it records the time spent by an employee on a given job.

A. It makes a very great difference whether I understand your question or not whether you get the right answer.

Q. Did he have any records that indicated the time of various individuals spent from day to day on the work that is described on that sheet?

A. He did. 3423

Q. Are those papers in existence today?

A. Which papers? The company has records of the time charged against this work.

Mr. Chambers: What he had.

The Witness: What the particular underlying data was before him on this page I do not recall.

3424 By the Master:

Q. Are the records that he used still in existence?

A. They are.

The Master: Mr. O'Brien, I am not going to permit any further cross-examination along this line. I think you have made your point very clear.

Mr. O'Brien: There are a great many matters here, your Honor, that we have to ask special questions about because there are different classes of work. Let me illustrate what I mean. You get down to the item "Miscellaneous", the questions I have asked about the first four items do not apply to that.

3425

The Master: Let me see if I cannot set you straight on this. The witness has not testified to particular items at all. I doubt whether I should let him testify to particular items making up the total. He has simply testified on redirect-examination and following that on cross-examination when you asked him whether $114,000. would cover it, that the exact figure according to the statement which he has, is $112,000. or some odd. That is all. He has not attempted to support that figure or show how it was made up. All he can say is that is the total that appears by that account. I think you have developed it on your cross-examination as to the extent and weight of his testimony, and I am not going to permit any more on that line.

3426

Mr. O'Brien: Your Honor, the items that follow here are so different from the first four

items they will need a lot of questions and if 3427
we let the record stand as it is it will be incomplete. For instance, here is what is called here "Coke briquetting plant" and it covers the masonry work and excavations and work on the retorts, and a vast lot of money that is not covered and cannot be covered by the general questions asked about the first four or five items.

The Master: It must be the same.

Mr. O'Brien: I will try to be as brief as I can. I will cooperate with the Master in that respect and I would like to let the record be 3428
complete by questions I bring out.

The Master: Ask him the next question.

Mr. O'Brien: I will go ahead as briskly as I can.

By Mr. O'Brien:

Q. You have here the steam piping. Was that work done by the company or by contract?

A. You are still on page 1?

Q. Page 1?

A. It was entirely company's labor, although some of the dollars would include the material.

Q. Still, you bought the material and your labor was entirely furnished by employees of the com- 3429
pany?

A. Except as far as special pipe mending may have been done by the contractor.

Q. And the gas and water piping, the same you would say about that, would you?

A. I would; yes, sir.

Q. Was that entirely done by the employees of

3430 the company or was any part of it let out by contract?

A. That is my present recollection, that we did it all with company labor.

Q. Do you know when that was done and when it was finished?

A. My memory is, and I believe it is supported by the statement, that it was done in 1906 and 1907.

Q. This steam piping includes all of the pipe on that particular lot, or does it run over on to the other street to the coal gas plant?

A. This particular item of steam piping is the
3431 steam piping in the boiler house and in connection with these boilers.

Q. Then it does not include any piping off at that particular block?

A. It does not.

Q. And the same you would say about gas and water piping?

A. I would. It relates to this building only.

Q. And can you recall whether the stock for these two items was taken out of the general stock of the company, bought by wholesale, or was it particularly purchased for these particular jobs?

A. I do not remember, no.

3432 Q. The superintendents I have asked you about. Miscellaneous. Now, there is no indication as to whether that is material or labor. Do you know of what the items there is made up, $1771.32?

A. That might contain some material, but my present impression is that it is principally labor.

Q. Well, could you recall any particularly big items to which it refers, or is it a sort of a general

item to cover odds and ends covering the whole 3433
work?

A. It does not include any big items. If it did, it would be separately accounted. The fact that it does not include any big item is the reason it is posted.

Q. Well, can you give us some idea of it, it is $1700, isn't that itself a big item itself? Can you give us any idea of what it covers?

A. The character of expenses that might be so charged, I can illustrate, without pretending that they refer to any episode on this particular work. I could illustrate that.

3434

The Master: Well, then don't illustrate it.

Q. Well, is it meant to cover everything that you could not take care of under all the other items?

A. It means direct expenditures made in connection with this building and its contents that were items difficult to distribute, or from their character, could not be distributed over these different accounts.

Q. Well, is it petty cash account?

A. There might be some petty cash in there, some carfares that some one collected when they were sent out to make an inspection on the stack before it was delivered, and in that connection the man 3435
might have inspected the feed water heater and several other things, and when he came back it was difficult to allocate his carfare and expenses to the different items.

Q. Well, then, it is designed to cover everything else you could not cover any place else in this statement?

A. Well, it is designed to cover such items.

3436 Q. Well, in what part of the record is it kept; is there a particular branch of the record would cover it?

A. The ledger account would show an account the same as this.

Q. Well, I know, but if we went to the ledger, we got page 743 of the record, what is that called?

A. It would be headed, the column, "Miscellaneous".

Q. Miscellaneous in connection with what?

A. With this boiler house.

Q. You would have the ledger account, and ref-
3437 erence to what other record?

A. Vouchers.

Q. That would be the reference, to a voucher number, or to the journal, or what?

A. Both, possibly.

Q. Well, do you know?

A. I know the usual appearance of those things.

Q. Have you ever seen that miscellaneous account in the ledger?

A. Yes, sir, quite surely. I have seen everything here.

Q. Well, now, tell me what the reference or cross references are in the ledger account in that miscel-
3438 laneous, if you remember?

A. Oh, I don't remember what they are now. I don't pretend to remember them.

Q. Well, is some one in authority covering the supervision of the work engaged in the supervision of the work handled, or authorized to spend such moneys?

A. I don't understand that.

Q. Give us an illustration. You don't under-

stand my question. You started a minute ago to 3439
give us an illustration of what you had in mind.

The Master: Well, I stopped the witness, and I now stop him again.

Mr. O'Brien: Well, your Honor, it is a very important matter.

The Master: No, I don't think so. The more I listen to these questions, the more I am inclined to that belief.

Mr. O'Brien: Well, here is seventeen hundred odd dollars, something he said he could not allocate under any of the other items on this page. 3440

The Master: The more I listen to this cross-examination, the more I am inclined to think we are getting nowhere with it.

Mr. O'Brien: Well, then, I will pass on.

Q. Can you give us any further explanation of it, Mr. Alrich?

The Master: No, we have had enough of it.

Mr. O'Brien: Will your Honor take the witness's answer?

The Master: No, no, I think we have had all we want of it.

Mr. O'Brien: Well, I take an exception to the ruling of your Honor. 3441

Q. Can you explain, Mr. Alrich, why under this particular item you have references made to the years 1906, '7 and '8, whereas in the preceding items the years mentioned are 1905 or '6 or '7?

A. I can answer, yes.

The Master: Answer it.

The Witness: Because there were some

3442 items of miscellaneous character which expenditures were made in 1908 that pertained to the execution of this work.

Q. You can't say how many men were involved—how many men or the class of labor that were involved in this item?

A. No. That might be a combination of both labor and petty cash. There might have been a special delivery stamp in it.

Q. Do you recall the steam line across 15th street?

A. I do.

Q. What was that put in for?

3443 A. To connect up these boilers with the boiler in the plant across the street.

Q. That I take it is called a new steam line, it took the place of an old one, did it?

A. It did.

The Master: Mr. O'Brien, I am going to give you notice now that the more you inquire about these items, separated from the total, the more I am going to hold you to the proof of those items, and I am going to rule the witness is testifying about new matter at your request in proving up these items, so you better look

3444 out.

Mr. O'Brien: Well, your Honor, I think you can rule the——

The Master (Interrupting): He has not attempted to prove any of those items. I don't know whether I would let him if he tried, and you are proving them for him now.

Mr. Chambers: Now, he testified to this total of five of these improvements.

The Master: Yes. 3445

Mr. Chambers: Now, I gather from what your Honor says, you are going to hold that unless they support this proof in the ledgers and vouchers and other data, that your Honor is going to hold that they have proven that those expenditures were paid by his say-so?

The Master: No. My attitude on that is this, that in a rate case I am not going to take the testimony as it has come in to be of very great force or effect, as almost any evidence at all, indicating that the amounts were unusual or exorbitant or improper or probably 3446
too high, that there will be very little probative force in the statements made. There is some, but the more Mr. O'Brien proceeds to interrogate this witness as to the details of this total and asks him whether he knows it or not, has him swear as to the amount, the stronger he is making their case, and the stronger he is making the case for the complainant.

Mr. Ransom: Your Honor, here is the very best man, the very best kind of testimony as to these expenditures, because here is the testimony of a witness who knows.

Mr. O'Brien: Well, he doesn't know any- 3447
thing yet, the witness has not shown in any way——

The Master: (Interrupting) Mr. O'Brien, if you will permit me——

Mr. O'Brien: I am talking about his testimony now on these items.

Mr. Ransom: Let me finish my statement. Here is a man who not only had the relation

3448 which he testified to the work and to the ex-
penditures and the vouchers at the time the
work was done, but also who has had the very
recent relations to it which he has testified to

The Master: I think in a case of this kind
Mr. Alrich, if he undertakes to prove up the
items of expenditure as your witness, ought to
bring in his original vouchers, or the best proo
that can be had with reference to it; but the
minute Mr. O'Brien tries to analyze the total
given, that very minute Mr. O'Brien is savin
you a lot of trouble.

Mr. Ransom: He has saved us a lot of trou
3449 ble.

The Master: Now, I am telling you, Mr
O'Brien, that that is what I am going to hold
It is not strictly cross-examination. The cross
examination as to the statements made by the
witness that it cost $112,000 is this: How d
you know, how did you get at it, how did yo
do it. And in that way, in half a dozen que
tions you can indicate as clearly as you will i
a week that he has given you a figure that is n
supported at all by good proof. But the mo
you press him, the more you get him to swe
3450 that his recollection is that that figure is rig
the more you get him to swear, the more yo
make him your own witness, and I will ho
you to it.

Mr. O'Brien: Your Honor, I appreciate t
fact that if the witness comes up and spea
from positive recollection as to a certain expe
diture, I would be bound by it.

The Master: He can't do it, it is thirte

years old, and it cannot be done. But what I 3451
will do as Master in this case, Mr. O'Brien, is, to illustrate the fact, I want if I can, acting in behalf of the People and of the complainant, as an umpire having no intrest in the situation, to get at the facts, and my view about it is as I have already expressed it, that we will get at the facts more quickly if we follow the rules of evidence which after an experience of hundreds of years has indicated is the way to get at the facts. Now, you say to the witness on cross-examination, Would $114,000 cover the expense of this work, and he says, Yes; Would $112,000, 3452
and he says, No. And Mr. Ransom on redirect very properly asks him, When you said $112,000 was too low and $114,000 too high, how much was it, and the answer was, One hundred and twelve odd thousand dollars. It is thirteen years ago, and he makes that statement, as appears quite clearly from the record, as the result of a tabulation made by accountants from original records in the archives of the Consolidated Gas Company. Now, I don't know what Judge Ransom's view is, about the trial of this case, but I know this, so far as his statement is concerned that it cost $112,000 in 3453
the light of conditions as they now exist, you have very largely destroyed, so far as you ever can, the probative force of his statement. That is all you can do.

Mr. O'Brien: Well, then, I won't proceed any more with this line.

The Master: I don't want you to feel I am shutting you off.

3454 Mr. O'Brien: No, I do not. I want to co-operate with the Court in the matter of avoiding any unnecessary questioning of the witnesses, but it appears now that this branch of the case, from the witness, was taken up by counsel for the complainant, in a haphazard way, and that it is his intention to cover this branch of the case by another witness.

The Master: He was just taking advantage of the door which you opened, and which was a very proper thing to do, and which I should have done had I been in his place, I would have walked right through the door quick as he did.

3455 Mr. O'Brien: Well, then, he walked out again.

The Master: No, let's get on.

Mr. O'Brien: The only thing is—I will suspend this examination now.

The Master: Don't do that.

Mr. O'Brien (continuing): Of the witness on the statement of the court.

The Master: Don't you do that. I would rather rule against your next question, and say that I won't permit any further cross-examination on that line for the reasons already stated,

3456 than have you assume anything.

Mr. O'Brien: Well, then let us make the record.

The Master: I will put myself on record; that is all.

Mr. O'Brien: The witness, at the time you had made that statement, had not made any definite statement himself, except that he put a price in there.

The Master (interrupting): Ask him the 3457
next question, and I am going to rule that I will not permit any further cross-examination on his statement that this particular job cost over $112,000, on the ground it is fully covered and that no further cross-examination is necessary. That will make your record complete, and you won't have to ask anything except what you have a right to ask over my ruling.

Q. Turning to page 3 of Exhibit 185 for identification, Mr. Alrich, would the questions that I made as to the items on the first page, be answered in the same way for items 1 and 2?

3458

The Master: Now, let me ask you before I permit that question to be asked by Mr. O'Brien, has that reference to the item of one hundred and twelve odd thousand dollars?

Mr. O'Brien: It has, yes, sir. It is part of that item.

The Master: The question will not be allowed, on the ground that the cross-examination has been as complete as I shall permit it with reference to that item, for the reasons heretofore stated as to the weight which that testimony deserves in the light of the cross-examination up to this time.

3459

Mr. O'Brien: Then I note an exception to your Honor's ruling. Just a few general questions, your Honor.

The Master: Go ahead.

Mr. O'Brien: I assume your ruling will be the same if I ask them about each item as I have asked them about the others?

The Master: Don't you hesitate; as long as you don't get angry with me for stopping you.

3460 Q. There is a new steam line mentioned on page 2, to which I have just called your attention. Now is that a different steam line than the four inch steam line referred to on page 3?

The Master: That question will not be allowed, for the reasons already stated as to the last question.

Mr. O'Brien: Exception.

Q. On page 3, under Item No. 1, you have an additional pump and feed water line in boiler house, 1912. That was an entirely new line, was it, Mr. Alrich, or did it take the place of one pre-

3461 viously put in?

The Master: If that refers to the one hundred and twelve thousand item, it is not allowed, for the reasons already stated.

Mr. O'Brien: Exception.

Q. You have under item No. 2, which is a general heading, "Valve House and Contents, East 15th street", an item called "Buildings", $3679.20. Will you state what particular buildings they are, if you know?

The Master: That is a different item now, isn't it?

Mr. O'Brien: Yes.

3462 The Master: Or is it still in the $1120 item?

Mr. O'Brien: Oh, yes.

The Master: Same ruling. I won't allow the question.

Mr. O'Brien: Exception.

Q. You have under the same heading, this item No. 2, on page 3, the item being "New Valve House and Contents, East 15th Street", an item

"Engines" $2,292.08. Are those engines located in 3463
the governor house?

The Master: I assume that is part of the same $112,000?

Mr. O'Brien: Yes.

The Master: I will not allow the question there for the reasons already stated.

Mr. O'Brien: Exception.

Q. You gave an item also under the same heading, "Exhausters, $2,348.86". Are the exhausters in the yard to which you referred the other day in your testimony, four different exhausters lying in the yard, are they any part of that item? 3464

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Can you state what the connections are in this item, $2,929.52?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: Assuming always that it is the same $112,000 item.

Q. Are they pipe connections on the mains in connection with the governor house, or are they some other items or some other connections that were put in in 1906?

The Master: Same ruling. 3465

Mr. O'Brien: Exception.

Q. The item miscellaneous, $565.31 under paragraph 2, page 3, is that of the same general character as the items miscellaneous to which you have referred on page 2 of this exhibit?

The Master: Is that the same $112,000.?

Mr. O'Brien: Same total, same name.

3466 The Master: I mean it is all part of the $112,000. item?

Mr. O'Brien: Yes.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Now, pipe painting equipment.

The Master: You need not ask any more, Mr. O'Brien, because I shall rule that all of that $112,000 item appearing on this paper which is not in evidence, that the examination has gone far enough. Now, if you want to take up the next item or ask a general question as to all of the other items of the total

3467 cost of construction, and bring out the fact that the witness' statement as to the exact total cost of construction is based upon this same report and has just as much or as little weight or probative effect as his $112,000. item, I will let you do that.

Mr. O'Brien: Well, there is something here that we ought to know anyhow, your Honor. On page 8 here we have coke briquetting plant, and I would like to know what that is.

The Master: Is that part of the $112,000?

3468 Mr. O'Brien: Yes.

The Master: Well, tell Mr. O'Brien what that is.

The Witness: Page 8.

The Master: Page 8. I thought you said they were numbered, Judge Ransom.

The Witness: That is equipment at the station for making briquets from coal or coke.

The Master: You mean in forms?

The Witness: Yes.

Mr. Chambers: A by-product, isn't it? 3469

The Witness: Well, it might be described as a by-product. It is manufacturing either the fine coal or the coke.

The Master: You see, Mr. O'Brien, whatever Judge Ransom's opinions in the matter may be, he has got to come here and show all these items, and then you will have a wide field.

Mr. Chambers: With that statement, all we want is these vouchers brought in here, so we will get a whack at them.

The Master: I think the other side is entitled to have a fairly good proof. As I say, 3470
I am not going to have you call every man who did an hour's work and all that sort of thing. If you prove by your regular books of account and records kept in the usual business way that certain time was spent and certain material bought and paid for, I am going to allow it, although I think Mr. O'Brien probably will object to that, but I think that will be fairly good proof.

Mr. O'Brien: Your Honor, their past lies won't be in this case.

The Master: Don't you want to ask the wit- 3471
ness about these other items while you are about it.

Q. Well, would your answers be, Mr. Alrich, as to the other items referred to on pages 774 and 775 of that record, about the same?

A. Substantially the same.

Q. The same?

The Master: In other words, the totals that you give are the totals which appear on this Exhibit 185 for Identification?

The Witness: Yes.

3472 The Master: Made up by Mr. Teele, in the way you have described?

The Witness: Correct.

The Master: And you cannot now after 12 years be able to pick out every item and separate them by virtue of your own knowledge as to the amounts actually paid?

The Witness: Not from my memory, no.

The Master: Isn't that what you want, Mr. O'Brien?

Mr. Chambers: Isn't this just a transcript from the ledgers?

3473 The Master: No, there is more than that, Mr. Chambers. Well, answer the question.

By Mr. Chambers:

Q. Couldn't I take that and check it from the ledger, isn't that a transcript from the ledger?

Mr. Ransom: You can check it from the ledger.

Mr. O'Brien: Wait a minute. He didn't ask you, but we would like to get you on the stand.

Mr. Chambers: Isn't this Exhibit 185 for Identification a transcript from the record from the ledgers, or substantially that?

A. Well, it represents a grouping and collection

3474 of the items in respect of certain construction projects.

Q. But taken right from the ledgers?

A. Taken right from the ledgers.

Q. And there is everything that is in the ledger on there?

A. Everything stands out clear to a penny.

Q. And then back of all that are the vouchers and time slips?

A. Yes, everything.

The Master: Anything more, Mr. Chambers, 3475
from this witness?

Mr. Chambers: No.

The Master: Anything further, Mr. O'Brien?

Mr. Chambers: In view of your Honor's ruling, I think nothing else.

The Master: Anything else, Mr. O'Brien?

Mr. O'Brien: Well, let me see.

By Mr. O'Brien:

Q. You were there Saturday, at 20th Street?

A. I spent three days going over——

Q. You say you were at 20th Street Saturday too? 3476

A. I did.

Q. You must have had an automobile going around?

A. I did.

Q. Did you see the wagons of the National Coke Company there Saturday?

A. There were some wagons of the National Coal & Coke Company in the yard of the 20th Street stable.

Q. Did you count them?

A. I did not.

Q. Could you say about how many there were?

A. No. 3377

The Master: Are you through, Mr. O'Brien?

Mr. O'Brien: With the rulings of your Honor, and the reservations made, yes, sir.

The Master: I didn't know of any reservations.

Mr. O'Brien: Well, I made a reservation.

The Master: Oh, you made a reservation?

Mr. O'Brien: I mean, I will have the privilege of examining the witness after I visit 44th Street and Inwood and 65th Street.

3478 The Master: Any more exceptions?

Mr. O'Brien: Well, I insist upon the right, subject to your Honor's ruling——

The Master: What I mean is that I have not permitted any reservation.

Mr. Ransom: I have a statement that I would like to make on the record at this time.

The Master: Let me see it before you read it. (Reading a statement.) Proceed and make your statement.

Mr. Ransom: The complainant Consolidated Gas Company hereby offers to stipulate, for all of the purposes of this suit, but for no other
3479 purposes, and wholly without prejudice to the right of the complainant or of any of the defendants to claim and prove, in any other action, proceeding or matter a higher or a lower value, that the present market value or selling price of the land used by the Consolidated Gas Company in its gas business is at least the assessed value of such land for the year 1918, as shown by the official tax assessment rolls. If such a stipulation is made by the several defendants, the complainant will call no witnesses to prove any other or differ-
3480 ent value of land in this action, the defendants likewise to call no witnesses on the question of the value of the land.

Mr. O'Brien: Your Honor will receive tomorrow morning our answer in regard to this paper.

Hearing adjourned till August 12, 1919, at 10 A. M.

Last Complainant's Exhibit 185.
Last Defendant's Exhibit "H".

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 3481

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 12, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant
MR. CHAMBERS, of Counsel for defendant Newton
MR. HAYWARD and JOHN H. CLARK, JR., 3482
of Counsel for Public Service Commission
MR. O'BRIEN, of Counsel for defendant Swann.

ARTHUR WILLIAM STARK, called as a witness in behalf of the Complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Where do you live? 3183

A. Stamford, Connecticut.

Q. What is your connection with the Consolidated Gas Company?

A. I am an engineer employed in the construction department, working directly under the personal supervision of Mr. Morris, engineer of construction.

Q. How long have you been connected with the Consolidated Gas Company?

3484 A. Nine years.

Q. All of the time in that capacity or in that de-
partment?

A. All of the time in that capacity and in that
department.

Q. Where is your office?

A. My office is on the seventeenth floor of the
Consolidated Gas Company's Building at 15th
street and Irving Place.

Q. Under Mr. Morris have you specially in charge
the details as to the allotment of space in the build-
ing at the corner of 15th street and Irving Place?

A. That is correct.

3485 Q. In that building has the complainant from
time to time rented space to tenants?

A. It has.

Q. And does so now?

A. It does.

Q. Are you personally familiar with the space
occupied and used by the various tenants, the time
when it was allotted and any readjustments of space
and use from time to time?

A. I am.

Q. As to space rented by the complainant, the
Consolidated Gas Company, in this building,
3486 any other individuals or corporations, is there
standard form of lease or not?

Mr. O'Brien: I object to that as incom-
tent, irrelevant and immaterial.

The Master: He may state whether there

Mr. Chambers: The lease would be the b
evidence.

The Master: It may save producing all

leases, to have the testimony that one form is 3187
used for all. I will allow that question. It cannot do any harm.

A. There is a standard form of lease.

Mr. Chambers: We don't know what a standard form of lease is.

The Master: Well, they call it their standard form of lease, one they use in all cases.

Q. Excepting the owners of the building, the complainant, is there any corporation or individual, to your knowledge, occupying or using space in the building except under written lease?

A. There is not.

3188

Q. Are you familiar with the contents of these leases?

A. I am.

Q. Under Mr. Morris do you actually and personally turn over to tenants space alloted to them?

A. I do.

Q. Or space readjusted between them?

A. I do.

Q. And you have charge of preparing the space for them?

A. I have.

By Mr. O'Brien:

Q. Do you mean the making of partitions, is 3189
that what you have in mind?

A. Yes, sir.

Q. Physically making partitions, you mean?

A. Yes, sir.

By Mr. Ransom:

Q. In the course of your duties do you have in use floor plans of each floor of this office building?

A. I have.

3490 Q. And within the past few days have you at my request taken a set of these plans and marked each in colors to show the space occupied and used by the complainant and by each of the tenants?

A. I have.

Q. Will you produce them?

(Witness produces plans.)

Q. Before these were colored, what were they?

A. They are lithographs of the tracings of the architectural plans of the building.

Q. And so far as showing the layout of the differ-
3491 ent floors is concerned, they are correct as of the present time?

A. They are correct as of July 1, 1919.

Q. And except for possible changes in partitions they are correct as of December 31, 1918?

A. They are correct as of December 31, 1918.

Q. These are lithographs from your own tracings of the different floor plans of this building?

A. That is correct.

Q. You have marked upon these certain colors you have divided the space into certain colors. Will you just indicate——

Mr. O'Brien: They have not been offered in
3492 evidence, or marked for identification, as yet.

Mr. Chambers: I think he is premature in his proofs. Let us have the leases first. I kept still until he proceeded to this.

The Master: Now, one man at a time.

Mr. Chambers: This is out of order, it seems to me.

The Master: Mr. Ransom is asking a question. Let us hear the question first.

Q. Do these drawings as colored show, to your 3493
knowledge, the space occupied and used by the complainant company and by various tenants?

Mr. Chambers: To that I object first upon the ground that the plans are not yet in evidence, and second, that they are not competent until he puts in the leases. He is asking about a paper that has not been offered in evidence nor received.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I join in the objection, your Honor, and I might say here, so it will be 3494
clearly understood, while it might be serviceable for us to have some showing in the shape of a picture or calculation of what space is actually used by the complainant, and what space is used by others than the complainant in that building, our position is, speaking for the defendants, that this building, that the cost of the building that is used, or those portions of the building used by others than the complainant, must be entirely eliminated from this case; that they cannot—the real estate business is just as extraneous to the issues in this case as is the appliances, the sale and merchandising of 3495
appliances, and any other business in which the Consolidated Gas Company may engage; and that, therefore, they will have to begin right from the bottom, and they have got to eliminate from this case any expense that this company may have gone to in erecting a structure that they did not need.

The Master: I am going to permit them to

3496 put in evidence everything that they claim. When it comes to a decision of the case, I may refuse to recognize some of their claims, but in order to have the record we have to have the proofs.

Mr. Ransom: Of course, the complainant does not claim that this whole building is used in the gas business.

The Master: Mr. O'Brien says you haven't any right to charge any part of it.

Mr. Ransom: We undoubtedly have a right to charge a part of it.

3497 The Master: That is a matter to come up. Mr. O'Brien joins in Mr. Chambers' objection; the objection is overruled, and an exception is allowed to all counsel.

Mr. Chambers: My point being addressed to the proposition that he must put in the leases. I want to see the leases.

The Master: I am just passing on the matter as it develops now.

A. They do.

The Master: Now, the next question.

Q. And with this use of the different colors, you have shown the space so occupied and used?

3498 A. I have.

Mr. Ransom: I offer the map.

The Master: Have you by some emblem indicated what the various colors represent on this sheet?

The Witness: I have. Not on each sheet. On the first sheet there is a legend showing what the different colors represent.

Mr. Ransom: I offer that in evidence.

Mr. Chambers: No, your Honor, I object to 3499
it on the ground that he may not intend ever to put in the leases, and before this would become competent, we are entitled to have him produce the leases themselves.

The Master: I am going to receive it, Mr. Chambers, as showing actual occupation.

Mr. O'Brien: Now, your Honor, I am going to vigorously object to this going in. This is a pretty crude affair. We haven't got here a statement of the use. We have simply got a flaring red picture in color there that indicates space that was used exclusively by the 3500
Consolidated Gas Company. Now, this does not indicate the use. I daresay they have got the auditorium in here showing that as something that is used; the barber shop, the kitchen; the restaurant, the ground floor and the part of the second floor used for the sale of merchandise, which is not part of the gas-making business. I certainly object to this being received in its present form and without their further data.

Mr. Chambers: I add to my objection now that the legend on the first page, "space used exclusively by the Consolidated Gas Com- 3501
pany", is a conclusion, and also that the rest of the legend on the first page—"occupied" might be one thing, but to say it is used exclusively, that is a conclusion, and it seems to me that we ought not to be bound by it.

The Master: I agree with you, Mr. Chambers, that the language used opposite the red legend is not entirely free from criticism. I

3502 shall receive it as indicating the space claimed by the complainant to be exclusively occupied by the Consolidated Gas Company. I will allow an exception.

Mr. Hayward: Save an exception to the Public Service Commission.

The Master: Yes, an exception to all counsel.

Mr. O'Brien: Your Honor, I call your attention again to my objection here that this picture does not—should not be received in its present form, because the bases that are indicated there are, according to the testimony already in, not
3503 used exclusively by the company, by the complainant, and are not used in the gas-making business or in anything that is directly necessary, such as clerks' office or engineers' department. I will illustrate. I mean by that, the auditorium, the kitchen, the restaurant, the barber shop, and these appliance rooms. Now, receiving these in here without further testimony, without the witness Alrich withdrawing his testimony as to what these floors are used for, I think it certainly is incompetent, irrelevant and immaterial.

3504 (The maps were then received in evidence and marked Complainant's Exhibit No. 186.)

Mr. O'Brien: Another point I want to call your Honor's attention to is that there are a lot of dimensions down here that will need a microscope to find out what they are, and it does not appear from the witness that these are correct, and we have not had them verified. When we went into these plans, as your Honor

will recall, we tried to find out who H. B. was 3505
and E. C. C., and some other people, and they have not yet been identified. The plans were not verified or identified by the witness Alrich, and I make that as a further objection. For aught we know, these plans may be used by their experts, their real estate experts and their building expert as verified plans and true and authentic as to their dimensions, and they have not been proven, and hence I further object to the receipt of this collection.

Mr. Chambers: I join in that.

The Master: I will rule the same. 3506

Mr. Hayward: Will you please tell what the scale is, I can't make it out.

Q. Do you know what the scale is?

A. It is not correctly to scale. These are lithographs of tracings. The tracings themselves are one-eighth inch to a foot, and these are about one-half that scale, approximately one-sixteenth to the foot.

Mr. Hayward: Then the scale shown on here, it says one-sixteenth to the foot, does it?

The Witness: It says one-eighth on there.

Mr. Hayward: It says one-sixteenth.

The Witness: Then these are half size, one- 3507
thirty-second.

Q. These are lithographic reproductions of tracings?

A. The marking on there is correct, one-sixteenth.

Mr. Ransom: The witness says that the marking one-sixteenth is correct.

The Master: The witness having measured

3508 the plan, has now stated that it is correct, one-sixteenth to the foot.

Mr. Hayward: I understand. That is one-sixteenth of an inch equals a foot. That is not exact, is it?

The Witness: No, it is approximately that.

Q. In the course of your duties, Mr. Stark, do you from time to time prepare for use and furnish to the accounting offices of the company a chart or table showing in summary form the space alloted on each floor to the tenant, and the rental to be paid for by each tenant?

3509 A. I do.

Q. Will you produce your chart?

A. I have a copy. I did not know you wanted to use it. I have brought it simply to refresh my own memory if necessary (producing chart).

Q. This is a chart made up and furnished to the accounting department as of what date?

A. As of July 1st, 1919.

Q. That is correct to your knowledge as of that date?

A. It is correct to my knowledge as of that date.

Q. And this is prepared by you in the regular course of the business?

3510 A. It is.

Q. And used by you in your relations with tenants?

A. It is.

Q. And furnished by you to the accounting department?

A. It is.

Q. And shows the area occupied and the rental paid?

A. It does. 3511

Mr. Ransom: I offer it in evidence.

Mr. O'Brien: I am going to object to it again, your Honor.

The Master: You have not objected to this before, have you? You have not objected to this paper.

Mr. O'Brien: Well, the principles on which I am objecting are the same.

The Master: The principles are entirely different. The objection to the receipt of that paper is sustained.

Mr. Ransom: It is withdrawn. You may 3512
cross-examine.

Mr. O'Brien: May I note the reasons of my objection?

The Master: No, the objection is sustained. The reasons are not necessary.

Mr. Chambers: I was going to object, but it became unnecessary. It became an abstract question.

Mr. O'Brien: "Academic" is the term counsel uses.

Mr. Chambers: Yes, academic. I stand corrected.

CROSS-EXAMINATION BY MR. CHAMBERS: 3513

Q. Mr. Stark, you say that all the floor space that is used by others than the Consolidated Gas Company in this building on 15th street is the subject of a written lease?

A. It is.

Q. Executed between the Consolidated Gas Company and these other companies?

A. That is correct.

3514 Q. You are familiar, I suppose, with the other companies that are in there?

A. I know all of them.

Q. And where are these leases?

A. The leases are in the Secretary's files of the Consolidated Gas Company, to the best of my knowledge.

Q. And they are available, I take it?

A. I presume they are, yes.

Q. They run from what time to what time?

A. They usually run for the period of a year.

Q. From January 1st?

3515 A. From March 1st, as a rule, although in some cases they do not date March 1st, because the tenants took the space and came in at some other period during the year.

Q. In this painting of yours, or whatever you call it——

The Master: Exhibit 186 we will call it.

Mr. Chambers: Yes, Exhibit 186.

Mr. O'Brien: I notice that that pink color is missing that was in Mr. Alrich's.

The Master: Well, we have red.

Q. You have colored in the two factories operated and used by the Consolidated Gas Company?

3516 A. Facilities used and operated by the Consolidated Gas Company, yes.

Q. Yes, facilities, I meant.

A. Yes.

Q. What do you mean by that,—like elevators?

A. The facilities operated and used by the Consolidated Gas Company in its business and for the benefit of other tenants, of elevators, the refrigerating room in the basement, the boiler room

in the basement, the meter room where the elec- 3517
tricity of the building is metered, and the gas of the building is metered.

The Master: Also coal storage?

The Witness: There is not really any coal storage in the building except——

Q. How about the barber shop?

A. The barber shop is leased.

Q. You have not got that included?

A. No, the barber shop is in yellow.

Q. How about the restaurant and kitchen?

A. The restaurant is colored in blue and the kitchen is colored in blue also. 3518

Q. Is that operated by the Consolidated Gas Company?

A. It is operated by the Consolidated Gas Company for itself and for the benefit of some of its tenants.

Q. It is not a philanthropic institution?

A. Not at all.

Q. They are business ventures, I take it?

A. That I cannot answer.

Q. Did you mark that in blue?

A. Yes.

The Master: The auditorium is marked out. 3519

Q. The refrigerating plant, is that used in connection with the restaurant?

A. It is.

Q. That is down in the basement?

A. It is used in connection with the restaurant and also in cooling the drinking water which is provided on all floors of the building for the use of employees and tenants.

3520 Q. The drinking water is used by everybody, I suppose?

A. Yes.

By the Master:

Q. How about the auditorium, Mr. Stark?

A. The auditorium is colored in red.

By Mr. Chambers:

Q. Where have you shown that; what page is that on?

A. It is auditorium floor, or you might call it the 13th floor.

Q. Where do you see that? I cannot find the designation of the floors here.

3521 The Master: They are marked.

A. They are marked on each corner.

The Master: The 13th floor, the auditorium space, is marked there "as auditorium".

Mr. O'Brien: Is that plate 6693?

The Master: Yes.

The Witness: 6693, yes.

Q. Is it not a fact that meetings are held there other than the Consolidated Gas Company meetings?

A. They are.

Q. Tell me why did you mark it in red?

3522 A. Because it is used by the Consolidated Gas Company and is permitted to be used by the Consolidated Gas Company by other tenants when proper request is made.

Q. That is the distinction?

A. It is.

By the Master:

Q. Well, the distinction is they get no revenue from it; isn't that correct?

A. The lease to each tenant contains a clause that 3523
they shall have the use of elevator service in the building and other things, and the use of the auditorium when requested. It is part of the terms of their lease. That is not all tenants, some tenants.

Q. And you do give them the use of the auditorium?

A. We do.

Q. Under that clause of the lease?

A. We do.

By the Master:

Q. Why was not that colored in blue the same as the elevator service?

3524

A. Because it is in no way leased or used by other companies except on special occasions, while that which is colored in blue is used at all times by other tenants.

Q. But the other tenants have a right to use the auditorium, you say, under that lease?

A. They have a right if the purpose for which they wish to use the auditorium is proper and if the request for the use of the auditorium has been granted by an executive officer of the Consolidated Gas Company.

Mr. O'Brien: It comes within the scope of this description opposite the blue on the front 3525
page, doesn't it?

The Master: I think we have got the witness's theory under which he prepared this map. There may be some question as to whether he is entirely right about it.

By Mr. Chambers:

Q. You testified, you know the space occupied by

3526 various tenants. How often do they hold meeting in this auditorium—anybody?

A. To my definite knowledge there were abou 300 meetings held in the auditorium during th year of 1918.

Q. Let me see, there are 365 days in the yea and practically, with the exception of 5 days, ther was a meeting there every day in the year?

The Master: No, with the exception of 6 days.

Mr. Chambers: Oh, excuse me. With the ex ception of 65 days, you had a meeting ther

3527 every day in the year?

The Master: Except on Sundays and excep that they might have two on some days.

A. Some days there might have been two meet ings. That very frequently occurs.

Q. What kind of meetings are those?

A. Meetings that are held in the auditorium by the Consolidated Gas Company are the Annua Meeting of the Company, the Stockholders of th Company is held there.

Q. That is only one meeting in the year?

A. Yes, sir.

Q. There are 299 others?

3528 A. Yes, sir.

Q. What are the 299 others?

A. The meetings of the Society of Gas Engineer ing is held regularly in the auditorium.

Q. Is that a National or State society?

A. The Society of Gas Engineering is an organi zation to which the engineering staff and heads o departments of the Consolidated Gas Company belong.

Q. But the Consolidated does not control that; 3529
that is all by itself an independent organization, isn't it?

A. No, not necessarily.

Q. Is it connected up with the Consolidated Gas Company?

A. The membership of the Society of Gas Engineering is made up of employees of the Consolidated Gas Company and other gas companies.

Q. And all the other gas companies, isn't it?

A. That is correct.

Q. National, isn't it?

A. No, not National.

Q. State? 3530

A. No, sir; it is not State.

Q. Several States?

A. No, sir; not several States.

Q. Well, what is it?

A. All the other affiliated gas companies.

Q. How many meetings about does that organization hold during the year?

A. They hold 10 or 12 regular meetings during the year.

Q. Beg your pardon? 3531

A. They held ten or twelve regular meetings during the year.

Q. And how many other affiliated gas engineering societies, of which this one you spoke of is a part?

The Master: He did not say that, Mr. Chambers. He said the employees of the Consolidated and affiliated companies, like the Standard, I suppose, or the Astoria.

The Witness: Yes.

3532 Mr. O'Brien: Does the witness answer yes to the Master's statement?

The Witness: That is correct.

Mr. O'Brien: The Mutual too?

The Witness: That is correct, yes.

The Master: The New Amsterdam and the Standard?

The Witness: Yes.

Mr. O'Brien: And the Westchester Lighting?

The Witness: Yes.

Q. Is not the Chicago Gas Company also a mem-

3533 ber? Aren't some of their employees members?

A. No, there is no person of the Chicago Company a member of the Society of Gas Engineering to my knowledge.

The Master: Are you a member?

The Witness: I am.

Q. What other organizations meet there? Let me just change that a little bit. You have described one meeting out of the 300 held by the Consolidated.

The Master: Mr. Chambers, do not let us waste time on that. We know what he is describing. Go to the next question.

3534 Q. How many other meetings are held there by the Consolidated, if any?

A. When the head of a department wishes to bring the employees of his department together in order to bring something special to their attention, such meetings are frequently held in the auditorium.

Q. How many out of the 300 of those?

A. I could not say.

Q. One or two a year? 3535

A. I should say considerably more than that.

Q. And do the other companies in the building do that same thing?

A. That has been done by some of the other companies in the building, yes.

Q. Do the other companies hold their annual meetings there?

A. I have never known of any of the other companies to hold their annual meeting in the auditorium.

Q. What other meetings are held in the auditorium besides those you have described, by other 3536
organizations of the company?

A. The educational work which the Consolidated Gas Company carries on its various departments—such meetings as that are held in the auditorium.

Q. I know, but you have a school?

A. That is very true.

Q. And these other pieces of property for that?

A. That is true. What I refer to is for instance, the utilization department carried on an educational course for the employees of that department, to my definite knowledge, within the past three years. Also such meetings of that department 3537
were held in the Auditorium.

Q. You hold moving picture shows?

The Master: Mr. Chambers, perhaps I can save some time here.

By the Master:

Q. You have a record of the meetings held, haven't you?

A. I have.

3538 By Mr. Chambers:

Q. And what they were for?

A. Yes.

Q. And by whom?

A. Yes.

By the Master:

Q. Let us have that record?

A. I haven't that record with me.

Q. Telephone up and get it down.

A. Yes.

By Mr. Chambers:

Q. Is that record correct?

3539 A. I should say it was reasonably correct, yes, sir.

Q. Now, that is a revenue producing auditorium, isn't it?

The Master: Well, that is a question.

A. I don't know.

By the Master:

Q. Do you make a direct charge?

A. The only time when a direct charge is made is when there is a meeting held by other than the Consolidated Gas Company in the auditorium after hours when it is necessary to provide special purposes for the use of that auditorium. Then I set

3540 the cost of such special session to the assistant secretary of the company.

Q. Such meetings have been held?

A. They have been held, yes, sir.

Q. About how many will it seat?

A. The auditorium will seat 299 people.

Q. Lectures are held there?

A. They are.

Q. What kind of lectures?

A. All sorts of educational lectures. 3541

Q. Sometimes admission is charged for those?

A. There has never been any admission charged to my knowledge for any meeting held in the auditorium.

Q. For any public lecture?

A. I don't know that there has ever been a public lecture held there.

Q. Any political meetings ever held there?

A. Never knew of any political meetings being held there, though we have had any number of Liberty Loan rallies there during the war.

By the Master:

Q. I suppose a great many of these three hun- 3542
dred were taken up by Liberty Loan rallies, were they?

A. No, I should not say so; the Liberty Loan rallies would be a small number.

Q. Are they included in this list?

A. They were.

By Mr. Chambers:

Q. On the last sheet it says "Pent house partition plan." That is the restaurant, is it?

A. It is.

By the Master:

Q. So that the restaurant is really on the roof, 3543
is it?

A. That is correct.

By Mr. Chambers:

Q. You style that "Facilities operated and used by the Consolidated Gas Company" in blue?

A. And used also for the benefit of other tenants.

Q. Used also for the benefit of other tenants relates to the other, does it?

3544 A. It relates to the blue.

The Master: The yellow is space used exclusively by others.

Q. How many years have you had a restaurant in there? During the ten years you have been there?

A. This building has not been built that length of time.

Q. Well, ever since that top floor has been there?

A. No.

Q. How many years back? It is not 1919. How far back has it been there?

A. The restaurant was opened about a year after
3545 the building was completed.

Q. That is a revenue producing affair I suppose?

A. I could not answer that; I don't know.

Q. Meals are charged for?

A. The Consolidated Gas Company charges for all meals served in the restaurant, yes.

Q. What is on the 18th floor?

A. The 18th floor is occupied by the Consolidated Gas Company's drafting department and all other departments which relate to the drafting department.

Q. And the 17th floor?

3546 A. The 17th floor is occupied by the construction department, and the department of mains and services.

Q. The 16th floor?

A. The 16th floor is occupied as the executive floor of the Consolidated Gas Company, and partially occupied by the Astoria Light, Heat & Power Company.

Q. You have assigned that little yellow space to 3547
the Astoria?

A. That is correct.

Q. The 15th floor, who occupies that yellow?

A. The 15th floor is occupied by the New York Edison Company.

Q. And the 14th floor, what is that red on the 14th floor?

A. That is the upper portion of the auditorium. The auditorium is two stories high.

Q. And the yellow?

A. The yellow is space occupied by the New York Edison Company. 3548

Q. And the red on the 13th floor?

A. Space occupied by the Consolidated Gas Company.

Q. For what purpose, what goes on there?

The Master: Part of it is the auditorium.

A. Part of it is the auditorium.

Q. What is that yellow?

A. The yellow is the barber shop on the auditorium floor.

Q. That is leased out to a barber?

A. Yes, sir, that is correct.

Q. And the 12th floor?

A. The 12th floor is occupied by the Consoli- 3549
dated Gas Company.

Q. What goes on there?

A. The Department of Utilization occupies a portion of that floor.

The Master: Legal Department, general department work, clerical force, it is all marked here. I don't think we want to spend much time on that.

3550 Mr. Chambers: No, I will not, if your Honor please.

Q. Now, the yellow on the 11th floor?

A. The yellow on the 11th floor is New York Edison Company.

Q. And the yellow on the 10th floor?

A. The yellow on the 10th floor is the New York Edison Co.

Q. And the yellow on the 9th floor?

A. The yellow on the 9th floor is New York Edison Company.

Q. And on the 8th floor?

3551 A. New York Edison Company.

Q. And on the 7th floor?

A. New York Edison Company.

Q. And the 6th floor?

A. United Electric Light & Power Company.

By the Master:

Q. That is the yellow on the 6h floor?

A. Yes, sir, the yellow.

By Mr. Chambers:

Q. What is the blue on the 6th floor?

The Master: It is marked telephone switchboard and apparatus room, ocker room, telephone girls.

3552 Q. That is what it is?

A. That is correct.

By the Master:

Q. In other words, wherever a description appears upon the plan showing the use it is being put to it is correctly stated?

A. It may not be correct.

Q. I see, they may have changed it?

A. It may have been changed.

Mr. O'Brien: Then they withdraw the descriptions? 3553

The Master: Yes.

Mr. O'Brien: And take his descriptions?

The Master: Yes.

By Mr. O'Brien:

Q. How about the dimensions?

A. As I told you, the dimensions shown on these drawings which you have in front of you are not accurate, for the reason that these are lithographs of tracings.

Mr. O'Brien: Your Honor, that is one of the objections I made to these diagrams.

3554

By Mr. Hayward:

Q. The figures are correct, but the scale may not be correct?

A. That is right.

The Master: In other words, the distance between piers appears to be 18 feet 7 inches and a fraction.

A. That is correct.

Q. And on the Irving Place side the distances between piers varies?

A. Those dimensions are correct.

Q. In other words, wherever they are indicated by figures they are correct? 3555

A. That is right.

Q. But you don't want to rely on your scale?

A. That is correct.

By Mr. Chambers:

Q. The red on the fifth?

A. That is occupied by the Consolidated Gas Company.

The Master: For what purpose?

The Witness: For the storage of appliances at this minute.

3556 Q. Appliances dismantled, you said.

A. No, storage of appliances.

The Master: New appliances?

The Witness: New appliances.

Q. New appliances like mantles?

A. No, ranges.

Q. Gas ranges?

A. Gas ranges, gas heaters.

Q. Gas heaters?

A. Yes, and other domestic appliances.

Q. Can you think of any other thing?

A. Why, yes, I saw there the other day so
3557 melting furnaces which are used in small shops.

The Master: And the yellow means a tena

The Witness: The yellow on the fifth fl
is space occupied by the United Company a
also by the Dahlstrom Metallic Door Compa
and the American Gas Association.

Q. And the fourth floor, you have some little
there; what is that?

A. That is used by the Consolidated Gas C
pany.

Q. For what purpose?

A. For the storage of small appliances like
irons and gas tubing and other very small ap
3558 ances which are readily picked up and must be k
locked up, under lock and key.

Q. That relates exclusively to appliances?

A. To appliances, correct.

Q. And the yellow?

A. The yellow indicates the space on the fou
floor used by the Edison Company and by the
York Mutual Gas Company.

Q. And the red on the third floor?

A. The red on the third floor is the space used by 3559
he Consolidated Gas Company, the Commercial
Department.

The Master: The yellow?

The Witness: The yellow is the space occupied by the Mutual Gas Company and by the New Amsterdam Gas Company.

Q. The second floor, what is the red?

A. The second floor, the red indicates the space
sed by the Consolidated Gas Company for a dis-
lay room, as a display room for lighting fixtures,
s lighting fixtures.

Q. No electric lighting fixtures? 3560

A. It is. The National Coal & Coke Company
lso occupies space on this floor, and the New
msterdam.

Q. No electric lighting fixtures.

Q. Gas lighting fixtures like what, mantels?

A. A mantel is not a gas lighting fixture.

The Master: Lighting fixtures.

Q. Combination gas and electric?

A. To my knowledge there is no combination gas
d electric fixture in the room.

Q. What are they now; tell us what they are?

A. Gas lighting fixtures.

Q. What are they? 3561

A. For all sorts of purposes, for stores.

The Master: Side brackets?

The Witness: Side brackets, yes.

The Master: Ceiling fixtures?

The Witness: Ceiling fixtures of all kinds.

Q. Chandeliers?

A. Chandeliers, yes.

Q. And the yellow?

3562 A. The yellow is the space occupied by t
Standard Gas Light Company and the Electric
Refrigerating Company.

Q. That is a corporation, is it?

A. I don't know whether it is a corporation
not.

Q. Well, it is a concern by itself?

A. Gas Company.

Q. Now, the first floor, the yellow on the righ

A. The yellow on the right is the space occupi
by the New York Edison Company as a displ
room.

3563 Q. And the first blotch of red?

A. That is occupied by the Consolidated G
Company.

Q. For what?

A. By the commercial department.

Q. And the red on the left?

A. The red on the left is known as Branch Tw
Commercial Department, Consolidated Gas Co
pany.

Q. And the yellow on the left?

A. The yellow on the left is the Commercial D
partment of the New Amsterdam Gas Company.

Q. The basement floor, the yellow first, what
3564 that?

A. The yellow is space used by several differ
companies, the United Company has space the
the Astoria Company has space there, the N
Amsterdam Company has space there.

Q. Those are vaults?

A. Those are vaults, fireproof vaults.

Q. And of all of those different vaults, you h
the Consolidated as using one?

A. The Consolidated uses four. 3565

Q. I only see one marked on there in red, in the middle are there some other vaults there?

The Master: Above it are the vaults.

Mr. Chambers: Above that, I see.

Q. And what is that red along the side there, on the righthand side on the bottom?

The Master: On the Irving Place and 15th Street corner, you mean?

Mr. Chambers: Yes.

The Witness: That is used for the storage of appliances.

Q. Well, like what, for instance? 3566

A. Domestic and small appliances which might be used in a shop, such as furnaces.

Q. Gas ranges?

A. Gas ranges, gas furnaces.

Q. Now, the red in the middle there?

A. The red in the middle is used for a display of large appliances by the Consolidated Gas Company.

Q. Like what, for instance?

A. There there are all sorts of heavy appliances, gas appliances, such as heavy ranges used in bakeries and candy shops, candy factories.

Q. And the blue in the middle?

A. The blue in the middle, at the front, at the 3567 street front.

Q. The upper part?

A. The upper is the refrigerating room.

Q. And the lower on the 15th Street?

A. The lower are the meter rooms.

The Master: That is called what, switchboard room?

The Witness: Yes.

3568 The Master: And high pressure lighting?

The Witness: Yes, sir.

The Master: The meter rooms are what?

The Witness: The meter rooms for metering the gas and electricity which is used throughout the building by all tenants.

The Master: On this statement there hasn't been any change in the use of this space set aside, has there? There is the boiler room over here, and the——

The Witness: Yes, sir.

The Master: Storage room?

3569 The Witness: Yes, that storage room is incorrect, and that has been changed. That is the locker room.

Q. What is that blue on the Fifteenth Street entrance?

A. That is the store room for the restaurant.

Q. And the red there running through the middle to the left of the centre?

A. The red is the display room of the appliance department, Consolidated Gas Company.

Q. And the blue over in the corner of East Fifteenth Street?

A. You mean the lefthand corner?

3570 Q. Yes, the lefthand corner.

A. That is the boiler room.

Q. I did not hear you say anything about the Standard Gas Light Company as having occupied some space?

A. I mentioned the Standard Gas Light Company as occupying space on the 2d floor.

Q. The Central Union Gas Company, I did not hear you say anything about that?

A. They do not occupy any space in the build- 3571
ing.

Q. The United Electric?

A. I mentioned the United Company as occupying space on the 5th and 6th floors, also in the basement.

Q. The New York Mutual?

A. The New York Mutual occupies space on the 2d and 3d or 2d, 3d and 4th floors.

Q. How about the American Gas Association?

A. I mentioned the American Gas Association as occupying space on the 5th floor.

Q. How about the Dahlstrom Metallic Door 3572
Company?

The Master: He mentioned them, and he mentioned the American Gas Company.

Q. The Brush Electric Illuminating Company?

A. I don't know who the Brush Electric Illuminating Company is, nor do I—to my knowledge they do not occupy any space in the building.

Q. It is on the bulletin board?

A. It may be.

Q. Their name.

A. I do not know that they occupy any space in the building.

Q. Well, you know you have a bulletin board 3573
there with the names of the companies on?

A. I do.

Q. Did you ever know that that name was on the bulletin board?

A. I never did.

Q. Well, it is there. That is all.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Stark, is your time entirely taken up in

3574 taking care of the tenants, the allotment of space—are you the agent of the building?

A. No, it is not.

Q. Well, give me a definite description of just what your work is. What is the joke about it?

A. No joke. My duties are voluminous, it is very hard to put it in a few words.

Q. Are you a man of many trades? And many lines?

A. No.

The Master: Tell us in a rough way. You are in the construction department as an engineer?

3575

The Witness: I am.

The Master: Now, do you have to do with new construction?

The Witness: I do, indeed.

The Master: Well, just tell us the best you can, and take as many words as necessary, and give us a general picture of what your duties are.

The Witness: I prepare specifications, supervise drawings and at times, in connection with new construction and repair work for the company. I also take bids, prepare the bids when

3576 they are received for approval by the engineer of construction or the executive committee of the company, and after such approval I very often get in touch with the contractors, let the work and supervise the work. I also have charge of many miscellaneous things which Mr. Morris as engineer of construction cannot give his entire time to, and I take those duties off his shoulders.

The Master: Do you supervise the steel con- 3577
struction?

The Witness: The steel construction?

The Master: Yes.

The Witness: I have nothing to do with any part of the steel construction of the company.

Q. Now, are you under or over Mr. Alrich?

A. I am not under Mr. Alrich, nor am I over him.

Q. Are you in his department? You know Mr. Alrich?

A. I do, indeed.

Q. Are you in his department? 3578

A. I am in the same department with Mr. Alrich.

Q. I mean, you are in the engineering department, you are engaged in similar work to his?

A. Yes, sir.

Q. Steel construction—construction work?

A. I never have anything to do with steel construction of the company.

Q. Well, you go into bids, and you make plans covering repairs and new work, is that correct?

A. That is correct.

Q. And that is the same kind of work he does?

A. Yes. 3579

The Master: But it is a different department, or is it a different department doing the same kind of work?

The Witness: Not necessarily, but he may have duties which I do not have, and I may have duties which he does not have.

Q. Well, you are apart from him then, he is not

3580 in charge of all of the construction and draftsmanship work then?

A. Mr. Morris is head of the construction department, he is head of it.

Q. Well, I mean under Mr. Morris, then, Alrich is not the next man in charge, is he?

A. As much as any other man in the department, yes, sir.

Q. But there are others that have similar authority, and that are on a par with him, so far as authority goes?

A. In some of the work which he has to do with, so far as I know.

3581 Q. Would that be draftsman's work?

A. There is certain work which Mr. Alrich has to do under the charge of Mr. Morris which no one else has anything to do with, and there is work which I have to do under Mr. Morris which Mr. Alrich or no one else has anything to do with.

The Master: I assumed when you started to ask these questions you wanted to show what part of this man's time——

Mr. O'Brien: Oh, yes; I have a lot of things in mind.

The Master: I don't want any comparison

3582 with Mr. Alrich or his duty, or this man's duty, or how they conflict. That don't get us anywhere.

Q. Then primarily, we may say that your work is in connection with construction work and the making of contracts and the carrying on of repairs?

A. That is correct.

Q. You don't spend a very large portion of your time about this building, is that it?

A. I do spend a good deal of my time about the 3583
uilding.

Q. About how much?

A. I should say that ten per cent. of my time is evoted to the work in connection with the building.

Q. Then you turn in a report each day of the time ou have spent on different kinds of work?

A. I do not.

Q. How often do you turn in such a report?

A. I turn in no such report other than in con- erence with Mr. Morris, in several years.

Q. Then are we to assume from that that no ecord is kept of the division of your time on vari- 3584
us branches of work?

A. I don't know that there is any division of my ime kept at the present time.

Q. So far as you know then, there isn't any?

The Master: He has answered the question, Mr. O'Brien.

Q. Then prior to the last couple of years was it ustomary for you to make an oral statement to Ir. Morris from time to time about what you were oing?

A. It is customary for me at the present time or me to make an oral statement to Mr. Morris f what I am doing. 3585

Q. How often?

A. I have no regular period for making such oral eport.

Q. You mean you discuss the work you have been oing, and if you are sent on a mission, you come ack and report?

A. Yes, sir.

3586 Q. But you don't know that prior to two years ago there was any record kept of it?

A. I know that there was, for a few years ago there was an accurate record kept of it.

Q. There was a written record?

A. There was a written record, yes.

Q. And periodically there would be turned in a report?

A. I made a report regularly as to just how much of my time was spent on different work.

Q. And if you did some work for the Standard Gas Company, or the Westchester Lighting Company or the Queens County Lighting Company or
3587 any of the affiliated Gas Companies, you would turn in a report indicating how much time was spent on those matters?

A. That is correct.

Q. And likewise, you would divide up the time spent on different classes of work for the complainant, the Consolidated Gas Company?

A. That is correct.

Q. Now, that practice has been abandoned the last two years, except to the extent of telling Mr. Morris from time to time what you have been doing?

3588 A. No, the practice has not been abandoned. In my case the practice has not been abandoned.

Q. Well, do you mean to say that you are now turning in written reports?

A. No. I probably misunderstood——

The Master: Well, explain what is in your mind.

The Witness: Up to the last two or three years I always sub-divided my time on what

ever I was doing, but in the last two or three 3589
years I have not done so. Other persons in the department, other men in the department still divide their time to what they are doing. Some do not.

By the Master:

Q. What Mr. O'Brien meant was the practice as to yourself.

A. Yes.

Q. That is correct?

A. Yes.

Q. It is likewise correct as to Mr. Alrich, is it?

A. That is correct. 3590

Q. Are there other men in that class?

A. There are.

Q. Am I correct in my understanding that as to the men in a superior position, rather a supervisory position, the practice of subdividing time has been abandoned?

A. Generally speaking that is correct.

Q. But as to draftsmen and men in subordinate positions the practice still obtains?

A. That is correct.

By Mr. O'Brien:

Q. Then as to the men in subordinate positions we have on the files up there available a record of 3591
the time they have spent on different classes of work?

A. That is so.

Q. And even now you spend ten per cent of your time in the running of the building?

A. I should say about ten per cent.

Q. Are the applications made to you for the use of the auditorium?

3592 A. No, they are not.

Q. To whom are they made?

A. They are made to Mr. W. R. Addicks, vice president.

Q. Are they made in writing?

A. I do not know that. I know that some of them are made in writing, because I have seen such requests.

Q. And how many members are in the American Gas Engineers? Is that the title?

A. The American Gas Association?

Q. Yes, how many members are in that?

3593 A. The American Gas Association is a national association made up of men of the gas industry all over the United States.

By the Master:

Q. What was the name of that other association?

A. The Society of Gas Engineering.

By Mr. O'Brien:

Q. The Society of Gas Engineering, that is a local affair?

A. Yes, sir; that is correct.

Q. Made up of the engineers in the complainant company and in the affiliated companies?

A. Engineers and heads of departments.

3594 Q. And do they take in non-technical men? I mean, for instance, the heads of commercial departments?

A. No.

Q. Or the Street and Main Departments?

A. The Street and Main Department head is of course a member. The Commercial Department men are not members of that organization.

Q. I see. Must the men to be members—is there 3595
a requirement that they be graduate engineers?

A. No, there is not.

Q. It is made up of men practically connected with the gas making work?

A. The engineering staff of the company and their immediate assistants, with one or two exceptions.

Q. Do the companies themselves take membership as in the Gas Institutes?

A. I am quite sure they do not.

Q. This is altogether apart, then, from the Gas Institute? You know what I mean when I speak 3596
about companies having memberships, do you not?

A. I do indeed.

Q. You know that in the Gas Institute they have their memberships and also a certain proportion of the membership committee——

A. Yes.

Q. Passing upon the members who might be elected to membership?

A. I know that in the American Gas Association there are such things as company members and individuals.

Q. About how many men are in this association 3597
that you say use this auditorium once in a while?

The Master: What do we care, Mr. O'Brien?

Mr. O'Brien: Your Honor, this goes to the absolute utility of asking consumers to pay for that space in that building.

The Master: Yes, but what do we care about how many members they have?

Mr. O'Brien: I am going to show through the witness, your Honor, that the best use

3598 they make of that room is the occasional meeting of small committees or small groups of men, which meetings could be held in any other room of the large offices in that building.

The Master: Go ahead.

Q. Now state how many, if you know, are on the roll of membership?

A. I do not know the exact number, but it is approximately 115 to 125.

Q. And have you got that roll?

A. Have I?

Q. Yes.

3599 A. No, I have not the roll.

Q. Who has the roll of membership?

A. Why, I should say the secretary of that organization.

Q. Who is he?

A. I think Mr. Macklin is secretary of the organization.

Q. Mr. Macklin, and he is employed by the complainant?

A. He is.

Q. In what capacity?

A. He is the purchasing agent.

Q. And he has an office at 15th Street?

3600 A. He has.

Q. In this building?

A. He has.

Q. Have you been at many of the meetings yourself?

A. I attend very nearly all of the meetings.

Q. You could say, then, about the average attendance at the meetings?

A. I should say the average attendance is about 3601
80.

Q. Well, the secretary's records would show that, would they not?

A. Yes, they would.

Q. Do they have a roll call?

A. They never have had a roll call at any meeting which I attended.

Q. Would the minutes indicate the discussion that is had there and the business brought up?

A. I presume it would. I never saw the secretary's minutes.

Q. You have heard his minutes read? 3602

A. I have heard the minutes read, yes.

Q. And you have some idea as to the scope of the minutes?

A. I have.

Q. And how minutely, if at all, they describe the business as transacted?

A. They do.

Q. What other organizations are there meeting there? Does the American Gas Institute hold any meetings there?

A. I never have known of the American Gas Institute to hold any meetings there. They may have, but I have not any recollection of it. 3603

The Master: Mr. O'Brien, to save time, during Mr. Chamber's cross-examination I directed counsel for the complainant to get this record of the concerns which actually used it, and I think you ought to withhold that cross until we get that.

Mr. O'Brien: Yes.

The Master: I understand that there are

3604 some other persons who have charge of tha who will testify to that record. You can cro examine them. They will probably know mo about it than Mr. Stark.

Q. Are there many meetings held there in th night? That is unusual, I take it, from what yo said?

A. It is very unusual to hold meetings in th night, yes.

Q. Do you charge them for electricity used?

A. No, we do not.

Q. Do you charge them for elevator service?

3605 A. We do.

Q. You have a flat fee per night, do you?

A. No.

Q. Do you serve them lunch after the meeting, buffet?

A. At the evening meetings?

Q. Yes.

A. I know of some meetings which have been he when there has been something to eat afterward a dinner afterwards, yes.

Q. And that has been served in the restaura above?

A. That is correct.

3606 Q. These are meetings of the employees or this organization that you have spoken of?

A. The particular occasions which I have in mi are the meetings of the Society of Gas Engineeri

Q. Do you in your official capacity as direc of space in the building keep any statistics or r ords of the business done in the restaurant?

A. I do, yes.

Q. Does the money pass through your hands?

A. No, sir. 3607

Q. What part of the records do you keep of the restaurant business?

A. I keep a record, or that is I have charge of the record which is kept of the number of meals which are served from day to day and other statistics regarding the dining room and its use.

Q. And the employees—you have a number of employees?

A. Who use the dining room from day to day.

Q. I meant the number of employees attached to the restaurant and kitchen. Is that your affair too?

A. Yes. 3608

Q. Then you are able to say how many chefs you have?

A. I can say definitely.

Q. And how many are there?

A. We have a managing chef, we have one head cook and one assistant cook, and I think probably three or four other employees who work directly in the kitchen, such as dishwashers, potwashers and so forth.

Q. Have you a steward, then?

A. No, we have no steward.

Q. Does Macklin do the purchasing for the kitchen, the restaurant? 3609

A. Not all the purchasing of the kitchen is done through Mr. Macklin; some of the purchasing for the kitchen is done directly by the managing chef. However, all of the——

Q. Is there any strict line of demarkation between what one purchases and what the other does?

A. Yes, I was about to explain. All the materials purchased for the restaurant, confirming orders are

3610 sent from the purchasing agent. I am quite sure that is the practice.

Q. The orders all goes through Macklin?

A. I think that is correct. I am not positive, but I am quite sure that is correct.

Q. Although made to some extent by the head of the kitchen, the head chef?

A. Yes.

By the Master:

Q. Am I right that Mr. Macklin buys such things for the restaurant as chairs, tables, ranges, and that the chief steward, the head chef, buys the supplies

3611 from day to day?

A. No, I mean the supplies that are served on the table.

By Mr. O'Brien:

Q. You have to give way to the chef as in all hotel restaurants, a certain leeway; is that the idea?

A. No, but Mr. Macklin is a purchasing agent for the Consolidated Gas Company, but the managing chef of our restaurant department I would say is more familiar with the purchasing of the supplies that are served on the table than Mr. Macklin would be or any other purchasing agent for a similar corporation if they had not had previous

3612 experience.

Q. In other words, Mr. Macklin probably relies upon the head chef for the purchasing?

A. That is correct to a great extent, I am quite sure.

By Mr. O'Brien:

Q. Are you familiar with the records kept of purchases?

A. No.

Q. Do you know how they are kept? 3613

A. I have myself a record of all food supplies on hand from week to week or month to month, and am able to make a statement of what supplies are on hand from time to time.

Q. Are you a stock clerk, so far as the restaurant goes?

A. I have a stock clerk, yes, sir.

Q. You have a stock clerk under you?

A. Yes, sir.

Q. Then you are supervisor of the restaurant, are you?

A. No.

Q. Just give me an idea, sum it up as to just 3614
what your capacity is with regard to the restaurant business?

A. Mr. Morris, as engineer of construction, is supervisor of the restaurant. Under Mr. Morris I look after all these matters for him.

Q. Then under you is Mr. Macklin?

A. No, I have nothing to do with Mr. Macklin in the operation of the restaurant.

Q. Who is there that says expenses may or may not be made?

A. The managing chef does such purchasing.

Q. Who checks up Macklin, and who supervises 3615
the restaurant, you or Mr. Morris?

A. I do.

Q. You do?

A. Yes, sir, for Mr. Morris.

Q. Then practically you represent Mr. Morris?

A. That is correct.

Q. And the whole thing is under you?

A. That is correct.

3616 Q. And you can tell whether the proceeds of the restaurant are great or small?

A. I know what the proceeds of the restaurant are.

The Master: Are you trying to find whether it is profitable or otherwise?

Mr. O'Brien: No, I don't want to go into that. I will finish with that branch of the inquiry.

Q. Is there a separate record kept of the receipts and expenses of this restaurant?

A. I make a report from time to time of the cost
3617 of operating the restaurant, which cannot be an accurate cost, because I have not access to all figures. Such record is undoubtedly kept in the accounting department of the company.

Q. What figures do you lack?

A. I might lack supplies that are furnished by other departments to the restaurant department.

Q. What would that be; just illustrate that.

A. For instance, if the restaurant department wants some cheese cloth for cleaning, they would not requisition cheese cloth through the purchasing agent; or if they did requisition cheese cloth through the purchasing agent, that might be supplied from
3618 the building department, rather than purchased on the outside.

Q. And the same way with the printing. I suppose that the printing might be done by the regular printing department of the Company?

A. We haven't any printing done in the restaurant except for forms on which to keep records.

Q. Don't you have a menu?

A. No, we don't have any menu——

Q. The waiter tells the guests what they are go- 3619
ing to have?

A. We have no printed menus. We have a written menu, one on each table each day.

Q. It is a card or paper?

A. It is a piece of paper written in long hand.

Q. And it is bought somewhere?

A. I presume it is.

Q. That would come, perhaps, from the stationery of the complainant company?

A. That is correct.

Q. And not separately purchased by the restaurant? 3620

A. That is correct.

By the Master:

Q. I suppose if they had any repairs to make in the kitchen, they would have the repair department attend to it?

A. Any repairs made in the kitchen, if they are minor repairs, would be made by the engineer of the building and his force.

By Mr. O'Brien:

Q. If the ranges got out of order, if the flues got blocked up, or the plumbing was out of order, you would call some of the building mechanics to fix it?

A. That is correct. 3621

Q. You would not call in an outside plumber?

A. That is correct.

Q. And have it done simply to keep it separate?

A. That is right.

Q. Is there any man whom we may look to for these reports showing moneys received?

A. I don't know what you mean.

3622 Q. You said a while ago that you turned in from time to time a report?

A. Yes, sir.

By the Master:

Q. Where are those reports?

A. I turned those reports over to Mr. Morris each month.

By Mr. O'Brien:

Q. Each month?

A. Each month.

Q. And that practice has been going on for how long?

3623 A. Ever since the restaurant was started. At one time it was kept once a week, but for the last few months it has only been made once a month rather than once a week. I say a few months, I mean since the period of the war, because we were unable to get help to do it.

Q. Would you be able to state by looking at Exhibit No. 186 the dimensions of the space used by the restaurant and kitchen?

A. I can.

Q. Will you read that into the record.

A. The space occupied by the restaurant department of the Consolidated Gas Company ——

3624 By the Master:

Q. Including the kitchen.

A. Including the kitchen—is all of that space shown on plate No. 6699 colored in blue.

By Mr. O'Brien:

Q. Have you the area computed?

Mr. O'Brien: The witness hesitates.

Q. Can you refresh your memory by referring to a paper?

A. Yes. It is 12,960 square feet. 3625

Q. That practically takes in all of the floor space of that particular floor?

A. That is right.

The Master: It is the roof of the building, the penthouse built on the roof of the building.

Q. Who waits on table?

The Master: I don't care about that.

Q. Have you waiters there?

The Master: We have enough of that.

Mr. O'Brien: I would like to find whether the clerks serve the tables or not. 3626

By the Master:

Q. Do you use clerks for that?

A. We do not; we have women waitresses.

By Mr. O'Brien:

Q. They don't spend any of the rest of the time in the employ of the company, in clerical or similar work?

A. None whatever.

Q. And the space is not used at any other time for any other purpose?

A. Yes, there are meetings held in smaller dining room at the westerly end through the day. I have attended many of such meetings. 3627

Q. Meetings of committees or employes or departments and so on?

A. That is correct.

Q. It is a pretty big space there?

A. The meetings which I refer to are usually meetings of three or four or a half a dozen men where they cannot get privacy anywhere else in the building.

3628 Q. You could get 115 in at a meeting, couldn't you?

A. Not in the dining room at the westerly end. In the large dining room that would be possible.

Q. Is just one meal served?

A. Just one meal served a day.

Q. That is lunch?

A. Lunch.

Q. From 12:00 to 2:00?

A. From about 11:30 to 2:00.

Q. Do the officers of the company dine there, too?

A. They do.

3629 Q. Or have they a private dining room of their own?

A. They have not what might be called a private dining room. The arrangement of dining rooms is as follows: One dining room at the easterly end of the floor being used by all employes who receive up to a certain salary.

Q. State what it is.

A. I don't know exactly what it is. I think it is $2,000. That is a guess. I am not sure of that.

Q. Approximately that?

A. Approximately that. Then there are four dining rooms at the westerly end of the floor, one
3630 of them known as dining room A, which is used by the officers and heads of departments of the New York Edison Company and the United Electric Company. There is a room known as dining room B, which is a small room, and is used for luncheons for up to 15 or 20 people when it is necessary for them to get together at noon time, and is not used regularly. There is a third room known as dining room C, in which all employes of the Consolidated

Gas Company or affiliated companies may dine, 3631
who receive a salary—I think the dividing line is over $3,500. I am not sure of that. There is a fourth dining room known as dining room D in which all employes who receive a salary between the first approximate amount of $2,000 and the second approximate amount of $3,500 may dine if they choose. There are different prices charged for each room.

Q. It is a scale higher for the higher employes?

A. That is correct.

Q. And I suppose the food correspondingly differs?

A. The food is the same in all dining rooms, comes out of the same pot. 3632

Q. Out of the same kitchen, made by the same people?

A. Yes.

By the Master:

Q. Is there an additional charge for the additional privacy?

A. No, I don't think it is that.

By Mr. O'Brien:

Q. Well, they don't serve honey dew melons to a clerk at fifteen dollars a week, do they?

A. Nor to anyone else in any dining room, to my knowledge. 3633

The Master: We have had enough of the food end of this. Let us get down to the gas-making end of it.

Q. These dining rooms, A, B, C and D are very large rooms?

The Master: He need not answer that.

3634 Mr. O'Brien: I want to get an idea of it your Honor.

The Master: No, no more.

Q. They would serve as committee rooms?

The Master: No more. You need not answer Of course they would. A room that will sea 25 people at a luncheon will make a good com mittee meeting room.

Mr. O'Brien: He didn't make it definite a to whether they are all of the same size.

Q. Are they all of the same size?

A. No, they are not, they vary.

3635 The Master: He said one was quite small one was quite large, one could seat 25 people

Q. Have you computed or can you refresh you memory with any paper which you have, and te us the area of the auditorium floor and the audi torium?

A. The auditorium floor is approximately 38 fe and 70 feet long.

Q. I call your attention to Exhibit No. 186, an ask you, taking that, to give me the dimensions o the auditorium space?

A. It is about 38 by 71 feet.

Q. That is on one floor you are giving?

3636 A. That is the floor area of the auditorium.

Q. And it runs up two stories?

A. That is correct.

Q. Does that include the vestibule if there i one?

A. The public corridor is the only vestibule. Th public corridor goes round it on both sides.

Q. It is that space you have just given me cover with red on this floor?

A. No, sir. 3637

Q. What is the rest of it devoted to?

A. The rest of the red on the floor——

Q. You are referring now to the auditorium floor?

A. There are some private offices on the 15th Street front.

Q. Whose offices are they?

A. I can't tell you the exact use of those offices now.

Q. Can't you bring here a list of just the men in these offices, where there is a separate office, and who has it, so I can ask you whether he is connected 3638 with this company or has something to do with another company? You have that list?

A. No, I haven't any such list.

Q. Well, can't you tell from memory who these men are?

A. I know pretty generally everybody in the building.

Q. Give us the best description you can give us.

A. In that particular case I don't know who occupies those offices.

Q. Why did you paint it red then to indicate it was used by the Consolidated Gas Company?

A. Because it is not leased to any other company. 3639

Q. Then we are to assume that you put red down on these diagrams in every case where there was not some other company?

A. That is not correct.

Q. I will press the question, and see if you can refresh your memory by looking at any paper and tell me who has these offices?

A. I don't remember who occupies the offices on

3640 the 15th Street front just to the right of the auditorium.

Q. Do you know the department, whether it is connected with the complainant company or not?

A. I think the Commercial Department. There is one office in that location which belongs to the Treasurer's Department of the Consolidated Gas Company.

Q. You can't tell who is in there?

A. I don't know the people's name.

Q. Can you bring us a list that will give us the names of everybody who occupies these different

3641 spaces?

The Master: No, I am not going to permit that.

Mr. O'Brien: The witness has stated that he has put down in red every bit of space that is not leased out.

The Master: All right, cross-examine him as to the statement made.

Q. Who occupies the rest of the space here not occupied by these private offices that you have mentioned, and the auditorium?

A. This space——

Q. Pointing where?

3642 A. To the south, on the southerly side of the building and west of the auditorium, is occupied as a woman's rest room.

Q. You didn't mention that before, did you, did you?

A. I was not asked, Mr. O'Brien. The space is occupied by the Consolidated Gas Company. I was asked who occupied it.

Q. How large a space is that?

A. That space is approximately 40 feet by 40 feet. 3643

Q. It is used in common by the various lady employees in this building?

A. It is.

Q. Not confined to those who work for the Consolidated Gas Company?

A. It is not confined to the use of the employees of the Consolidated Gas Company.

Q. Then why didn't you picture that in blue, and not red?

A. It would seem to me that that is Consolidated Gas Company space.

Q. It would seem to you? 3644

A. It is Consolidated Gas Company space.

Q. But you have on the front here, the inscription on this book, the diagrams here, "Facilities operated and used by Consolidated Gas Company in its business; used also for the benefit of other tenants". Wouldn't that seem to call for a blue color?

The Master: You see Mr. O'Brien these argumentative questions land us nowhere. You have made the point that his diagram is not accurate in that respect. I am inclined to agree with you that that is so. You don't have to argue with the witness about it.

Q. Who occupies the other space on the auditorium floor not occupied by the auditorium or these private offices, the occupants of which you do not now recal, and the woman's rest room? 3645

A. Indicated in red?

Q. Yes.

A. Since the 1st of July the American Gas Association has taken all of this easterly portion of the auditorium floor.

3646 Q. Did you mention that before?

A. No, sir.

The Master: Just a minute.

Mr. O'Brien: I have the right to ask the witness if he has been withholding something here. When he came on this stand and presented that exhibit it is the same as testifying that that is used by the Consolidated Gas Company.

The Master: One minute, please. His statement was limited to December 31st, 1918.

Mr. O'Brien: Your Honor, the statement was first made as of to-day, and then afterwards——

3647

The Master: No, no, it was quite clear to me, Mr. O'Brien.

Mr. Ransom: He corrected me.

The Master: And if you had been watching it as I was, Mr. O'Brien, you would have seen at once that there was a reservation in the witness' mind because he refused to follow Judge Ransom's statement that that was its condition to-day. He said it was July 1st, and then said it was December 31st. There wasn't anything withheld by the witness, and he should not be attacked on that ground.

3648

Mr. O'Brien: The statement certainly will apply to the witness' withholding information about the women's rest room.

The Master: I will not argue that. I have already said what I think about the women's rest room not being included.

The Master: I have already said what I

thought about the women's rest room being 3649
included.

Q. Now, state what this association is.

A. The American Gas Association.

The Master: He has already told us what it it is.

Mr. Ransom: Are you sure about that?

Mr. O'Brien: You don't need to prompt him, counsellor.

Mr. Ransom: Why, I was speaking to the Court.

Mr. O'Brien: You were looking at the witness.

Mr. Ransom: I was not referring to the wit- 3650
ness.

Mr. O'Brien: I would not assume you would ask the Court, "Are you sure of that". We don't ask the Court usually in that way.

The Master: Answer the question, "What is the American Gas Association".

A. I don't know definitely. I think the American Gas Association is an incorporated institution made up of employees of various companies over the United States, various gas companies.

By the Master:

Q. Is that the same association you said had an 3651
office or space downstairs?

A. That is correct.

The Master: That is what I thought.

The Witness: We are preparing this new space on the auditorium floor. It is not—while they have moved in in the last few days, it is not entirely complete and no record yet has been made of their occupancy. They have up until a few days ago been occupying space on the fifth floor.

3652 Q. On the fifth floor?

A. That is correct.

Q. How much space have they on the fifth floor?

The Master: That has already been covered.

Mr. O'Brien: The amount of space, your Honor, I want to put on the record.

The Master: Well, it is shown in yellow there.

Mr. O'Brien: No; they claim that the dimensions are not reliable, and on my copy they are not clear.

The Master: He didn't say anything of the sort. What plan is it (examining map)? Go
3653 ahead, it is not definitely set apart.

Mr. O'Brien: Your Honor, for your information I will state that our diagram is not clear like yours and hasn't the inscriptions on it.

The Master: Go ahead; I was in error anyhow.

Mr. O'Brien: It is blurred; it is pretty hard to tell.

The Master: I was in error in any event. I thought the particular space of that Gas Association was particularly shown. It is not. It is part of the general yellow space, and I will
3654 allow that question to be asked. What is the area used by the Gas Association on that floor?

Mr. Ransom: What inscriptions do you claim are on the originals that are not on the carbon?

The Master: It is illegible.

Mr. O'Brien: I say my copy hasn't got any of these inscriptions on it where you can read it. Take the first page, and you will see.

The Master: The inscriptions are on all of 3655
them.

Mr. Ransom: The inscriptions are on all of them, and they are identical.

The Master: If these are lithographic copies it is on there all right, but the color may be so thick there that you cannot see them.

Mr. O'Brien: Well, they put on an extra layer on mine.

The Master: Well, that is possible. What is the area now, of the Gas Association space on the fifth floor?

The Witness: I think it is about 1,400 feet, 3656
1,400 square feet was the space occupied by the Association on the fifth floor.

Q. Is it shown in yellow on this diagram?

A. It is.

Q. And it is shown—the space they are going to occupy is shown as red?

A. Correct.

Q. They are going to occupy much less space upstairs?

A. No, sir, they are going to occupy considerably more.

Q. Oh, they are?

A. Yes. 3657

Q. How much are they going to occupy upstairs?

A. I should say about 3,000 square feet.

Q. Well, have they got a corps of clerks, record rooms and all of that?

A. They have.

Q. Quite an elaborate layout there, is it?

A. Not elaborate, no.

Q. How many employees are there?

3658 A. I should say there are twelve to fifteen employees in those quarters.

Q. And they use the 3,000 square feet?

A. Yes, sir, that is correct.

Q. Extensive record room, have they?

A. They have three file rooms that I have prepared for them, which will take a considerable amount of records, yes, sir.

Q. Well, is there any other space, or what other space and who are the occupants of it, on the auditorium floor, other than the auditorium space and these private offices, the names unknown, the rest room and the American Gas Association?

3659 A. You are speaking of the space in red?

Q. Yes.

A. There is to the east of the auditorium, the first room on the 15th street side, is a coat room.

Q. Coat room in connection with the auditorium?

A. That is correct.

Q. How big a space is that?

A. That space is approximately 15 by 18. The next two rooms east of that are sleeping rooms.

Q. Sleeping rooms?

A. Yes, sleeping rooms—which I prepared and furnished.

3660 Q. You prepared them?

A. Yes, sir; for the use of the land of a department, or any man he might assign to sleep there at night in case of emergency.

Q. Well, do they sleep there right along?

A. To my knowledge those rooms have not been used since the signing of the armistice. Previous to that time they were occupied quite frequently.

Q. The officers used them, did they?

A. I never knew of any officer of the company 3661
to sleep in those rooms.

Q. Well, were they there originally when the building was put up?

A. They were not.

The Master: They were put up for the war purposes?

The Witness: They were put up just about when we went into the war, or probably a few weeks earlier.

The Master: Having in mind possible contingencies, was that the idea?

The Witness: Yes, sir, that was, to the best 3662
of my knowledge.

Q. Well, just illustrate who has used them—Mr. Woods?

A. I have never seen Mr. Woods.

Q. Mr. Bradley?

A. No, I don't think so.

Q. Mr. Sperling?

A. No, I never saw Mr. Sperling.

Q. Mr. Alrich?

A. I don't know whether Mr. Alrich has ever used them.

Q. Will you name anybody that has ever slept there? 3663

A. Yes, sir, Mr. W. D. Kelly used to sleep there frequently, and Mr. Turner has slept there frequently, and they are men—Mr. Kelly is not with us any longer, he has died, but was head of the department of meters. Mr. C. C. Simpson.

Q. Is he still with you?

A. Mr. Simpson is head of the department of

3664 meters and service. Mr. Travis has used the room, and his assistant.

The Master: Mr. Simpson would be a good man to have in case of emergency, wouldn't he?

The Witness: Yes, sir.

The Master: Go on, we have had enough of that.

Q. Go to the other space in red there.

A. The remaining portion of the space in red—

The Master: To the east of the auditorium.

The Witness: To the east of the auditorium

3665 is used as a school room, class room and a lounge room.

The Master: All of that space there?

The Witness: That is correct.

Q. Give me the dimensions?

A. That space is 64 feet wide approximately by 84 feet, approximately.

Q. That would be 5,976 square feet of space, would it?

A. 5,976, that is correct.

Q. Now, is this something that is planned, or is it in actual use?

A. It is in actual use each day.

3666 Q. What kind of a school?

A. All during last winter there were educational courses carried on in that room, the nature of which I do not know, because I never attended one, but I know that it had to be prepared every afternoon at a certain hour, be made ready at a certain hour to receive the class which came in about five o'clock.

Q. Men or women?

The Master: Is that what you referred to before, the utilization department, to these classes? 3667

The Witness: No, the utilization department used the auditorium.

Q. You said the department—the auditorium was used for educational purposes, too?

The Master: That is true.

Q. Well, tell us who were educated here?

A. I don't know who the employes were, or from what departments they came.

Q. Are they men or women, boys or girls, or all?

A. I don't know that, I can't answer whether it was both men and women. I am sure it was men, but I don't know whether any women came. 3668

Q. Where did they come from?

A. I can't answer that, either.

Q. Well, can you tell whether they were cellar-diggers or street department, or the men under Mr. Alrich?

A. I can't answer that question, I don't know from what department they came.

Q. Well, did they come from the affiliated companies, too?

A. I don't know which.

Q. You can't say? 3669

A. I can't say.

Q. Well, you would make ready for them in what way, putting in the chairs?

A. No, the request had been made through Mr. Addicks' office, through which all such requests are made for the use of that room for that specific purpose for a certain period or for a certain numbers of days beginning at such a time, and I would

3670 then be instructed to prepare the room, at his instructions.

Q. Well, now, Mr. Stark, where will we get a record of the number of days that has been occupied by classes and the names of the people there or some description of them? In Mr. Addicks' office?

A. I don't know where that record is kept. I haven't any record of it.

Q. Well, application must be made to Mr. Addicks to get in there, is that what we are to understand?

3671 A. That is correct.

Q. Well, are those infrequent meetings?

A. I know that they were carried on all during last winter. They are not carried on during the warm weather.

Q. They are suspended in the heated term, while we are going on with our trial?

A. There are no classes being held at the present time.

Q. Was this some more war work?

A. I do not know the nature of the work, Mr. O'Brien.

Q. Then we are to understand you were never

3672 in at a meeting?

A. I never was. I never attended a meeting.

Q. Have you ever seen any records that might indicate—is there a blackboard in there?

A. We have two blackboards in the building which are available for different class work or lectures at meetings.

Q. Well, I asked you——

A. I don't know whether the—— 3673

Q. You never put a blackboard in that room, did you?

A. I think there has been a blackboard put in that room for different class work, yes, sir.

Q. How much of the space is used for lounging?

A. When the classes are not in session, the benches and tables which are used in the class work are placed to one side in the room, and at noon time, when the employees come down from the main dining room, they are permitted to use that room as a lounge room and a smoking room, rather than going out on the street.

3674

Q. As a matter of fact, it is used more in that connection than any other; isn't that a fact?

A. No, I do not think so; I would not say so, Mr. O'Brien.

Q. They go in there every day, don't they?

A. These warm days there are very few people who occupy it; on wet days it is full.

Q. It is their practice to use it as a smoking room after every lunch?

A. It has been used for that purpose since the restaurant was in operation.

Q. And they go down there, those who want to smoke, every day? 3675

A. Yes, sir, they are permitted to do that.

Q. And rest there?

A. Yes, sir.

Q. So between half past eleven and three o'clock it is used for that purpose?

A. It is.

Q. Are any refreshments sold or served there?

A. None whatever, no.

3676 Q. There is a cigar counter in the restaurant, is there not?

A. There is not.

Q. Is there a chance to purchase cigars and cigarettes in the restaurant?

A. There is not.

Q. What other space is there pictured in pink or red on this floor that you have not described?

A. There is no other space which I have not described. All the rest of the space I have described.

Q. I want to ask you to take each floor where you have pictured on these diagrams a space in red, and
3677 indicate what part of said space is vacant, beginning at the ground, at the basement.

By Mr. Chambers:

Q. Before you do that may I ask you a question? Why did you block out these names on the 13th floor there? Do you see where he has been asking you about?

A. I do not know. This lithograph was made from the original tracing.

Q. It is all blocked out.

A. And the space since the original tracing was made has been reassigned.

3678 Mr. Ransom: That is, originally there were some names on there?

A. There were.

Q. Which are not correct at the present time?

A. Which are not correct as of the present time.

By Mr. O'Brien:

Q. Do you know what they were?

A. No, I do not.

Q. You do not remember that?

A. I do not. 3679

Q. You blocked them out, though?

A. No, I did not.

Q. What?

A. It was done by a draftsman.

Q. But under your direction?

A. Yes.

Q. You saw the plans before they were blocked ut?

A. I did.

Q. Your memory is a little weak since then?

A. Not weak memory, but——

Q. Can you say when it was? 3680

A. I have not the least idea.

Q. Can you say when you first established this ounging room?

A. A day or a very few days after the restaurant as first opened.

Q. Returning to my former question, Mr. Stark, eginning at the basement, take all the red space ou have there and state what part of it is vacant.

The Master: Colored in red.

Mr. O'Brien: If you have your scale there or any means of knowing or computing, give us the area.

A. In the basement there is no vacant space. On 3681 he first floor there is no vacant space.

Q. You are speaking positively now?

A. Speaking positively.

Q. You know, Mr. Stark, you must bear this in ind as you give me the answers. If we have a long pace in a room and some part of it occupied by a esk and some part of it vacant, that is what I mean n my question as vacant space.

3682 A. In order to answer your question, may I ask a question?

Q. Certainly. Get down to the basement first. Let us get down there.

The Master: He is down there.

A. Would you consider the space which is the vestibule of this vault vacant space? Because it is the vestibule and unoccupied?

Q. Yes, I would. That is a pretty big vestibule, isn't it?

A. No, because it is used——

Q. Who called it the vestibule?

3683 A. It is used many times to my knowledge, and must be there and cannot be occupied for any other purpose.

Mr. O'Brien: I am going to ask that that be stricken from the record.

The Master: No, I am going to allow it.

Mr. O'Brien: That it cannot be occupied for any other purpose?

The Master: I will let it stand.

Q. You are referring here to an open space in the basement on the Irving Place end of the building, adjacent to the vaults, which you say is used by the complainant company?

3684 A. That is correct.

Q. It is just to the south of the vaults.

A. That is correct.

Q. And that is a space which is about 18 feet wide. The space I have asked you about, which you call the vestibule, is 18 feet by how many?

A. By approximately 54 feet.

Q. And these vaults are used for what purpose? What is stored there—money or securities?

A. I do not know what is in the vaults. 3685

Q. Do you know whether there is anything in them?

A. I do know there is something in them.

Q. Have you seen them open?

A. I have been inside of that vault myself.

Q. Give us a general description of what they customarily put in them?

A. I do not know what is put in there; when I was in the vault I saw a good many steel racks with steel doors around the walls, and a safe also in that vault.

Q. That is all?

A. That is all. 3686

Q. And the vault space which you have colored here in red is a space about 20 feet by 100?

A. Oh, no. No, the space is about 18 feet wide.

Q. Not the inside; I want the outside dimensions. I am talking about them now?

A. By 48 feet long.

Q. Why did you exclude that vault on the rear, on the end?

A. Because that is a different type of vault. That is the storage vault, fireproof vault, and is in use by the company at the present time for the storage of other records. 3687

Q. Add that space to the vault space you have already computed and give us the total. That is about 20 x 20?

A. No, it is not that. That is about 15 feet more. That would be 63 feet total length, by 18 feet wide.

Q. For all the vault space of the complainant?

A. Yes.

3688 Q. What is this space here to the east of the vault?

A. That is part of the vestibule.

Q. You did not include that in the computation of the vestibule area which I asked you a few minutes ago to give?

A. I should have included it.

Q. Add it up and see. What will that be, about 18 x 20?

A. About 16 x 18.

Q. Then you have other vault space in the south side of the building?

3689 A. That is correct?

Q. Or the north side of the building?

A. That is correct.

Q. How much is that?

A. There are two vaults in the north side of the vault space which are used by the company. One about 18 x 18 and the other about 7 x 18.

Q. Have you ever been inside there?

A. I have.

Q. And what did you see?

A. The smaller one of the two is used for the storage of the record drawings of the company, the tracings. The larger of the two is used for the rec-

3690 ords of the accounting department.

Q. Along the border of the basement on the Irving Place side and around on East Fifteenth Street side you have a space marked in red about 10 feet wide.

A. Yes, sir.

Q. Why have you marked that in red?

A. Because that is used for the storage of appliances of the commercial department.

Q. Will you just give us as roughly as you can 3691
the dimensions of that space.

A. That space is on the 15th Street side approximately 9 feet wide and 105 feet long, and on the Irving Place side approximately 14 feet wide and 84 feet long.

Q. Is there any other space of that kind used for approaches or vestibules?

A. Any other space used for approaches or vestibules?

Q. Or not covered by material of some kind?

The Master: Marked in red on the basement plan.

Mr. O'Brien: Marked in red on the basement 3692
plan.

A. No.

Q. This middle space here which I point out is what?

A. Fuel appliance display room.

Q. Well, that is not used to run the building. That is a display room——

A. Display room for the fuel appliance department of the company. That is the commercial department.

By the Master:

Q. Is that the space where they show the large 3693
appliances?

A. Yes, large appliances, large furnaces.

By Mr. O'Brien:

Q. The cook stoves and ranges?

A. No, there are no cook stoves down there.

Q. I mean restaurant ranges, you said, didn't you?

3694 A. I do not think there are any restaurant ranges there.

The Master: He said for candy making machinery, etc.

Q. Yes, for bakeries and the like?

A. That is correct.

Q. And you show them around there?

A. That is correct.

Q. Rather infrequent visits made, I suppose?

A. I do not know how often the place is visited, but I am quite sure it is visited very frequently, because that basement is a very busy place to my
3695 definite observation.

Q. Then over here further you have a further display room (indicating)?

A. That is a display room also.

Q. Give me the dimensions of this first space we spoke of, where you have confectionery and bakery machinery?

A. That is about 40 by 40.

Q. Then you have a further display space in the basement and give me approximately the dimensions of it?

A. That display space in the basement is used for two purposes: The display of these large appli-
3696 ances and also the office space of the appliance department.

Q. And the whole area in this irregularly shaped space just referred to is what?

A. It is used by the appliance department for offices and display purposes, except the small portion to the east which is used by the locker room for the branch office which is on the first floor.

Q. Eliminating the space used for the lockers

or the branch office, give me the area of the space 3697
hat you have just referred to?

A. It is about 60 feet by 84 feet.

Q. That would cover it?

A. Yes, 60 by 84.

Mr. O'Brien: Your Honor, I have asked these dimensions for the reason that our contention is that this is extraneous to the gas making business.

The Master: Yes, I understand that.

Q. Coming up to the first floor, you have a display room there?

A. We have a display room up there. 3698

Q. Give me the area of that display room?

A. The area of that display room is approximately 40 by 80. That is this (indicating).

Q. And then this other space marked in red is used by the branch office entirely?

A. Is used by the branch office entirely.

Q. And they have clerks there who have charge of the range end of it?

A. The clerks who meet the public in connection with the rental or sale of ranges are on that floor.

Q. Yes.

A. That is correct.

Q. And the bookkeepers who handle that ac- 3699
count?

A. The bookkeepers who handle those accounts are also there.

Q. You are acquainted with the routine and arrangement of a branch office, aren't you?

A. I have been in branch offices, but I know very little about that business.

Q. You know when you ring up about a range

3700 you are switched down to the range department, or the clerks there?

A. That is correct.

Q. And if you want your rental you can get that readily, can't you?

A. I suppose so. I have never had occasion to do it.

Q. You do not know how many are in this branch office engaged in that kind of work?

A. I do not.

Q. That space marked in red, is that used by the branch office?

3701 A. It is, every foot of it.

Q. Have any of the other companies any desk room in there?

A. No, sir.

Q. Is it confined entirely to commercial business?

A. That is my knowledge; yes, sir.

By the Master:

Q. That is your understanding?

A. It is my understanding.

By Mr. O'Brien:

Q. There are no street department offices there?

A. No, there are none.

Q. The manufacturing end of it is not there?

3702 A. No.

Q. Has the Edison Company or the Electric Light Company any branch room there?

A. They have not.

Q. This space in yellow on this floor at the extreme east of the building is used by what?

A. The New Amsterdam Gas Company.

Q. And the yellow space on the Irving Place side right near the entrance is used by——

A. The New York Edison Company. 3703

Q. They are in on the ground floor?

A. They occupy that space on the ground floor.

Q. In your statistical work have you kept tabs n the number of employees of the tenants of the ilding other than the complainant?

A. I know generally the approximate number of nployees in the building, but as to the exact num- r in each company I do not know.

Q. Would you tell us that right from your emory?

A. Why, there are approximately 2,500 people in e building. 3704

Q. That includes employers as well as employees; mean officers as well as their subordinates?

A. Yes, sir.

Q. Will you proceed now to the second floor and ive us the space that is not occupied—space marked n red?

A. There is no space on the second floor which s not occupied.

Q. What is this used for (indicating)?

A. The space is used for——

The Master: The display room, isn't it?

The Witness: The display room for lighting fixtures. 3705

Q. And that is an area of what?

A. The portion of that used for the display of ighting fixtures is approximately 36 feet by 40 feet.

By the Master:

Q. Is there part of that not used for that pur- ose?

A. There is.

Q. What is that used for?

3706 A. It is used as a recreation room or meeting room for the Boy Scouts.

By Mr. O'Brien:

Q. Oh, another recreation room. These Boy Scouts, are they employed by the companies in the building?

A. They are.

Q. A separate branch of the organization made up of——

A. They are.

Q. How much space is occupied by them?

A. A space that is approximately 11 feet wide and
3707 40 feet long.

Q. Chairs in there and other equipment?

A. They have chairs in there; yes, sir.

Q. How old are these boys?

The Master: Judge Ransom, I think this Exhibit 186 is somewhat misleading and I think that it ought to be so marked as to truly represent the divisions.

Mr. Chambers: Suppose we move now to strike it out as misleading. I will make a formal motion. I will make a formal motion now that it be stricken out on the ground it is misleading and tends to confuse rather than
3708 to enlighten.

The Master: I shall grant that motion. You can have this witness color matters like this space to which he has just referred in some other color and give us a more definite picture of the situation. I shall rule that this diagram, Exhibit 186, is not an accurate representation in the light of the witness's testimony.

Mr. Ransom: Does your Honor take the view

that no space which is occupied for vestibules 3709
or recreation purposes is a part of the business of a company of this sort?

The Master: I do not pass on that at all; I am not saying one word about that. I am confining my ruling now to a paper which pretends to show a situation. When the witness says on the first sheet of this exhibit that the part colored in red is the space used exclusively by the Consolidated Gas Company, I expect that space to be space that is used or claimed to be used exclusively by the gas company. The minute I find space like this that is used for 3710
Boy Scouts', recreation generally of tenants of the building, I say it is not a true representation of the situation, it is not used exclusively for the purposes of the gas company. It comes more nearly under the blue "facilities operated and used by the Consolidated Gas Company" also used for the benefit of other tenants. If he took some other color, any one of the primary colors, and said that this space is used by the Consolidated Gas Company and likewise for the convenience of other persons, or some other apt statement, he would be correct; but I do not think it is correct as it is, 3711
and I shall strike it out as it stands.

Mr. Ransom: Will your Honor allow me an exception?

The Master: Yes. It is easy enough to fix it up. You take the restaurant space there, Judge Ransom, it is for the accommodation of other people in the building, it is not used exclusively by the gas company. And the audi-

3712 torium is not used exclusively for the gas company.

Mr. Ransom: We are certainly entitled to present our claim under the authorities.

The Master: Of course you are.

Mr. Ransom: And you are striking out a presentation of our claim.

The Master: No.

Mr. Ransom: You are.

The Master: I am striking out what purports to be a correct representation of the situation there, in the light of the witness's testimony. It is misleading.

3713 Mr. Ransom: Then your Honor specifically states that it was taken as a statement of our claim as to the rented space.

The Master: But it is quite clear in the light of the witness's testimony that it is not accurately drawn. It can be done without affecting your claims in the slightest. You can use any other language you please. I do not care how you put it as long as it appears clearly on this exhibit that this space, for instance, that is used by the Boy Scouts' recreation, is used for that purpose. The question as

3714 to whether you shall have the benefit of all or part of it in my conclusion as to the amount invested for the purpose of making gas is an entirely different question. You understand, Mr. O'Brien, that I won't permit any further cross-examination on this exhibit, because it is out.

Mr. O'Brien: That is understood. I have one or two other questions of Mr. Stark.

The Master: Mr. Ransom will probably 3715
have the witness put that exhibit in the shape I have indicated.

Mr. Ransom: I am very clear on the form in which it is now.

The Master: If you do not want to put it in the form I ask, I cannot make you. I tell you I won't take it in this shape.

Mr. Ransom: We are entitled to have our claim presented and the question of what form the sheet is in does not alter our claim.

The Master: I have ruled on it. I am perfectly clear in my own mind about it. 3716

Mr. Ransom: Exception.

Q. You spoke about a utilization room on a certain floor. That space is how much, do you recall?

A. The utilization department?

Q. Yes.

A. The utilization department I should say occupies a space 40 x 80, approximately.

Q. Do you go in that room frequently?

A. Well, that is several rooms.

Q. Oh, it is?

A. Yes.

Q. Do you know who occupies it, who the men are? 3717

A. I do.

Q. Can you tell us who they are?

A. I can.

Q. Who are they?

A. Mr. Rasch is the engineer of utilization.

Q. Mr. Rasch?

A. Mr. Rasch, engineer of utilization. Mr. Ben-

3718 nett is one of the engineers of the department, an
Mr. Palmer.

Q. Are these men connected with the affiliate
companies, too, any of them?

A. No, sir; not to my knowledge.

Q. You do not know whether they are on the pay
roll of these other companies?

A. I am quite sure they are not.

Q. Have you any means of knowing?

A. I have not any means of knowing that, no.

Q. Well, what makes you sure, then?

The Master: I won't allow that, Mr. O'Brie

3719 You have asked for his best knowledge, and yo
cannot cross-examine him on that.

Q. You have given us Mr. Rasch. Who else?

A. Mr. Bennett, Mr. Palmer, Mr. Scofield, M
Howes, Mr. Farley, Mr. Stevens.

Q. Farley?

A. Farley. Mr. Stevens.

The Master: What is the purpose of an
more of this?

Mr. O'Brien: This will lead up to some mo
vulnerable material.

The Master: What are you cross-examinin
about?

3720 Mr. O'Brien: I am asking him about th
space used by the utilization department.

The Master: I get Mr. O'Brien's purpos
I will let him answer.

Mr. O'Brien: Utilization, Your Honor—
do not know any other gas company that h
such a department, but we will find it out an
way.

Q. Go ahead, name the men.

A. Mr. O'Brien is in that department. There is 3721
a Mr. Mauer in that department also. M-a-u-e-r, I think is the way to spell it, but I do not think that is quite correct. He has a peculiar way of spelling it.

Q. Mauer?

A. Mauer. There are others in the department that I do not recall just this minute.

Q. More than that?

A. Yes, sir; there are.

Q. Engaged in what they call utilization?

A. That is correct.

Q. Do you know much about their work? 3722

A. I do not.

Q. Let me ask you, Mr. Stark, are you a technical man yourself?

A. I am not a college graduate, although I have attended college.

The Master: Mr. O'Brien means, are you a technical gas man or gas engineer, or simply a construction engineer.

A. Why, I have been associated with the Consolidated Gas Company, or I worked for the Consolidated Gas Company for nine years, and in that time I have picked up a considerable knowledge of gas engineering. 3723

Q. But you were not educated as a gas engineer?

A. I was not educated as a gas engineer, but I have picked up a considerable knowledge of gas engineering.

By Mr. O'Brien:

Q. You have had a course in higher mathematics.

A. I have.

Q. And physics?

3724 A. Yes, sir.

Q. And mechanics?

A. Yes, sir.

Q. Are you qualified to speak generally of the work done here in this utilization department?

A. I don't know what the work of the utilization department is. My association with them has been very slight.

Q. Are these men, from O'Brien back to Rasch, all technical men?

A. I think the greater part of them are technical men, yes, sir.

3725 Q. Engineers—they all belong to the Association?

The Master: I think we have had enough of this. Let us get on to something more important.

A. I think so, yes.

Q. But you don't know the work they are doing? I can let it go at that?

A. No, sir.

The Master: He has already said that.

Mr. O'Brien: I will defer any further cross-examination until the other diagram comes in.

The Master: I don't know that he is going

3726 to be recalled.

Mr. O'Brien: Oh, this may be the last day.

The Master: Are you through?

Mr. O'Brien: There is a lot of his oral testimony in here which is not on the diagram, and I will have to ask him about it.

The Master: The trouble with that is, I will not let you go very far, because there wasn't any oral testimony except cross-examination.

and anything that you asked him on cross- 3727
examination I am going to hold you to. You cannot start cross-examining on the cross-examination.

Mr. O'Brien: But where he was asked by Mr. Chambers as to such and such a floor, I want to go into that a little carefully.

The Master: I know, but the answer to that is that that exhibit is now out. I don't know what he has testified to about that exhibit. There isn't anything more to be said about it. He testified to some other little matters, but if there is any further cross-examination of 3728
the witness at this time, finish it up. If he is recalled to correct that exhibit, I will let you go back at him.

Q. Well, we were on the second floor. Will you tell me on the other floors what vacant space there is?

The Master: I will hold you to his testimony on this.

Mr. O'Brien: I suppose the testimony given is so intertwined with the exhibit that is now stricken from the record, that I can suspend here.

The Master: Don't call it suspension. Are 3729
you through with your cross-examination?

Q. What space is there on the other floors from the third floor to the pent house on the roof, not leased to other companies or other tenants than the complainant, which is vacant at the present time?

A. Which we have not already touched?

Q. Yes.

3730 A. There isn't another square foot of space in the building that is not occupied.

By the Master:

Q. Mr. O'Brien means by that, and let us have it perfectly clear, is there any space exclusive of space occupied by other tenants, and exclusive of the space that you have already testified to as being used by the restaurant and the rest rooms and this auditorium and this lounging room and the Boy Scout restaurant or recreation room, or the plan room, that is used now in some form other than for the use of space for the clerks or operating forces of the company. Are there any more rest
3731 rooms or rooms that are used in conjunction with other tenants or for outside institutions or for anything of that sort?

A. None whatever.

By Mr. O'Brien:

Q. Is there any vacant space, for instance, where there is a desk, and the rest of it open?

Mr. Ransom: I object to the question. It is misleading. You might say this room is vacant because every foot of the property is not covered. A room is not vacant because every foot of floor space is not covered by a desk.

3732 The Master: I don't believe there is a room in that building in the condition about which Mr. O'Brien has asked and I am going to let him answer the question.

Mr. O'Brien: I want to get a diagram before him and pin him right down.

By the Master:

Q. Is there any room in that building in which there is a table or a desk or a couple of chairs?

A. There is not. 3733

The Master: Is there anything more with this witness?

Mr. O'Brien: I will have to ask him some questions with the diagram of the building before him.

The Master: Do you withdraw your objection to this diagram?

Mr. O'Brien: I certainly do not.

The Master: Do you, Mr. Chambers?

Mr. Chambers: I do not.

The Master: Let us have it understood that that diagram is not in evidence. 3734

By Mr. O'Brien:

Q. Would you, taking any paper which you may have available to refresh your memory, give me or give us the area of the floor space occupied by the commercial offices of the complainant, the engineering staff of the complainant, the utilization department, the draftsmen, the executive offices, the laboratory?

Mr. Ransom: I object to the question in that form. It calls for altogether too many things.

Mr. O'Brien: Why, I assume that he can make the computation readily. Your Honor will appreciate the question. It is obvious that 3735 I want to find the space that is used in ordinary, everyday, regular, recognized, genuine gas business.

The Master: I am inclined to think, Mr. O'Brien, that if you want that information, I am going to let the witness put in all of the sheets now that do not require correction. Then you will have it. I am not going to spend a lot of time on computation on these diagrams.

3736 Mr. O'Brien: If the witness cannot give that readily, he will say so, but I assume that he might take the paper which he has with the computations——

The Master: That has to do with other tenants.

By the Master:

Q. Have you got all that there, the space occupied by the different departments?

A. No, sir.

Mr. Ransom: Not by departments.

The Master: That is what he is asking.

3737 Mr. O'Brien: If the witness cannot state it——

By the Master:

Q. To give the figures Mr. O'Brien has just asked for would require a good deal of computation, would it not?

A. I would have to have the drawings in front of me.

Q. This paper which had been marked Exhibit 186 has all that?

A. Yes, sir, I could compute it from that.

Q. You don't have to compute it; it appears right on that?

3738 A. The dimensions are shown.

Mr. O'Brien: He says they are unreliable.

Mr. Ransom: No, he didn't say that.

The Master: I will fix this exhibit up right now.

Q. Mr. Stark, I want you to take this exhibit, formerly marked as Exhibit 186, and mark in lead pencil diagonal lines on the space used for purposes not exclusively for the gas company. By

that I mean, not that I am passing upon the ulti- 3739
mate effect, but I want you to mark on here space like the auditorium, the restaurant, rest rooms used by other tenants and matters of that kind by diagonal lines across it.

Mr. Ransom: Might he not simply mark what those rooms are?

The Master: Just what those rooms are.

Mr. O'Brien: He has already given the space on cross-examination.

The Master: I will fix this up and get it in the record.

Mr. Ransom: I am not going to ask this 3740
witness, and it will not be done with the complainant's consent, to ask this witness to mark this diagram in a way that is contrary both to the complainant's theory of this case and complainant's position, and then offer any such exhibit thus prepared in evidence. I am perfectly willing to have this witness mark by the name "restaurant" or the name "auditorium", these spaces, and to let the evidence be fully developed as to what the status is.

The Master: We will take care of that. Just mark that space there and say what it is. Just mark on that paper, formerly Exhi- 3741
bit 186, diagonal lines across the page, this being sheet No. 6,682.

Mr. O'Brien: And purporting to indicate the twelfth floor of the building.

The Master: Just draw diagonal lines. You are doing it for me. You need not worry about counsel.

Mr. Ransom: Exception.

The Master: That is the Boy Scouts' room?

The Witness: Yes.

3742 By the Master:

Q. Now, the next sheet, is there anything of tha
kind on the next sheet?

A. No.

Q. On the next sheet?

A. No.

Q. On the next sheet?

A. No.

Q. On the next sheet?

A. No.

Q. On sheet 6692?

A. No, sir.

3743 Q. On sheet 6693?

A. Yes.

By Mr. O'Brien:

Q. What do you understand, Mr. Stark, to be th
Master's question, when you said just now nothing

Mr. Ransom: I object, now.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: To indicate on these differe
sheets any space which is now indicated i
red, which is used for the purpose of
restaurant, Boy Scouts, or used by other co
panies other than the Consolidated Compan

3744 or used in common.

The Master: Or in conjunction?

The Witness: Or in conjunction.

The Master: Just mark that.

Mr. O'Brien: I don't assume, and I don
suppose the witness ought to assume that y
had the Boy Scouts on every floor, and re
rooms on every floor.

The Master: Just a minute. Mark that.

(Witness complies).

By the Master: 3745

Q. Now, your cloak room here. Now, Mr. Stark, on this paper formerly marked Exhibit 186 in evidence, you had the symbol in red as with the words "Space used exclusively by Consolidated Gas Company"; is that correct.

A. That is correct.

Q. Now, you have at my request on sheets 6682, 6683 and 6694 drawn diagonal lines across certain of the space marked in red, and have written in that space so marked by diagonal lines the name generally given to the room, indicating its use; is that correct? 3746

A. That is correct.

Q. Or part of its use?

A. Yes.

Q. Now, with the exception of that space that you have now marked here, these diagonal lines, and to which you have given names indicating its use, or part use, the rest of it as indicated by the symbol red is correctly now stated to be space used——

Mr. O'Brien: Your Honor, you did not mark out the American Gas Institute, did you?

The Master: No, I am talking as of July 1st. That is correctly represented by red? 3747

The Witness: That is correct.

By the Master:

Q. There is no other space now in that building?

A. There is no other space.

Q. That is used in common with other tenants, or which other tenants have a right to use, or which outsiders have any right to use, that you know of?

A. None, sir.

3748 Q. Now, that is as of July 1st?

A. That is correct.

Mr. Ransom: May I just direct the witness' attention to one thing? Is there any part of the 17th floor, which, to your knowledge, is now being used by any one else, although marked red, that is Consolidated Gas Company?

Mr. O'Brien: Are you accepting this Exhibit, Mr. Ransom?

Mr. Ransom: I have not accepted it.

Mr. O'Brien: Well, you were cross-examining your witness.

3749 Mr. Ransom: The room next to Mr. Teele's room, do you know for what purpose that is being used?

The Witness: Of my knowledge, all the space on the 17th floor is now being used by the Consolidated Gas Company.

The Master: Well, counsel, as I understand it, for the Gas Company, claims that all this space in red is used by the Gas Company. The point I am trying to make clear in this representation on this map is that you have now marked by the diagonal lines and indicated by

3750 letters the space to which other persons have access?

The Witness: To my knowledge I have made a correct statement.

The Master: Of everything, now?

The Witness: Of everything.

Mr. Ransom: I don't want any misunderstanding about that. I ask leave to ask the

witness a leading question. Do you know 3751
whether or not there are certain rooms——

Mr. O'Brien: Why don't you simply state that the witness is wrong and you want to correct him?

Mr. Ransom: I did not want to ask him——

Mr. O'Brien: You are asking permission to ask a leading question, which is the same thing.

Mr. Ransom: I have objected to the informality of this procedure.

Mr. O'Brien: Why don't you withdraw the paper?

3752

Mr. Ransom: I have not offered it.

The Master: Wait a minute. Judge Ransom wants to make clear that there is some space on the 17th floor——

Mr. Ransom: I don't want to have this point raised, your Honor.

Mr. O'Brien: Concede that the witness is in error, why don't you?

The Master: No.

Mr. Ransom: Are there any rooms on the 17th floor ordinarily used and occupied by the Consolidated Gas Company, which have for some time been occupied and used by account- 3753
ants and statisticians of the Public Service Commission and the Attorney General?

The Witness: If there is, I don't know it.

The Master: All right. Now, the witness having clearly indicated upon this——

Mr. O'Brien: Your Honor, before you make that ruling, will you permit me to continue my cross-examination?

3754 The Master: No, I am going to dispose of this now. The witness now having indicated upon this map, or series of maps, the space about which there could be any question, and in the light of the witness' testimony with reference thereto, this exhibit will now be restored as Exhibit 186, the wording upon the front being ignored except to the extent that the space used exclusively by the Consolidated Gas Company as claimed by counsel for the defence is shown in red with the modification indicated by the diagonal lines, the other colors being claimed to properly indicate the other
3755 space.

Mr. Ransom: You will allow me an objection and exception to this whole procedure?

The Master: Yes.

Mr. O'Brien: Is this exhibit to be marked as Complainant's Exhibit or the Master's Exhibit?

The Master: This is restored as Complainant's Exhibit 186 in evidence, over the objection of Judge Ransom, and an exception being allowed.

Mr. O'Brien: My objection still stands, of
3756 course?

The Master: Yes, your objection still stands.

Mr. O'Brien: So, if the complainant and the defendant both object——

The Master: I will take an exception.

Mr. Chambers: I will take an objection to the admission of it again.

Mr. O'Brien: We will come back, Mr. Stark, to the second floor——

Mr. Chambers: May I suggest, if your Honor 3757
please——

The Master: You know there is too much of this technical business in the trial of a law suit. The point is to get at a correct representation.

Mr. O'Brien: Well, we may find some other kinds of scouts if we get a little further, your Honor.

Mr. Chambers: What we should have is a clean exhibit with the floor correctly marked just what is occupied by the restaurant, and then you can try to prove the restaurant is gas 3758
making business, if you can.

Mr. Ransom: No, we will go ahead with this form, and over the recess I will endeavor to have your copies similarly marked by the witness, and, if we are going to take a recess——

Mr. Chambers: No, I will not accept——

Mr. O'Brien: Are you going to accept?

Mr. Ransom: Accept what?

The Master: He hasn't anything to say about it. It is in evidence. Now, go ahead.

Mr. O'Brien: That is kind of a novel situation, your Honor.

The Master: The only way to try a law suit 3759
is to get at situations and dispose of them.

Q. Did you mark one of these crisscrosses at the direction of the Master across that space on the fifth floor, I mean on the auditorium floor, that is going to be occupied by the American Gas Association?

A. No, sir, I did not.

Q. Well, it is marked in red on that floor?

3760 A. It is.

The Master: As of July 1st?

The Witness: It is marked as of July 1st.

Q. Well, now I will ask you to put another mark for me on that.

The Master: No, I won't let him put any more marks on that. I simply had that exhibit corrected in accordance with the witness's testimony.

Mr. O'Brien: Well, are we to understand, your Honor, that you asked the witness to mark that with a cross?

3761 The Master: Yes.

Mr. O'Brien: Or diagonal mark?

The Master: Yes.

Mr. O'Brien: All space, which, according to his testimony, was used in common by the complainant with other people?

The Master: Yes.

Mr. O'Brien: Or was used by——

Mr. Ransom: I object to counsel's characterization of it.

Mr. O'Brien: Well, wait until I get through.

The Master: It won't do any harm.

Mr. Ransom: It speaks for itself.

3762 Mr. O'Brien: Your Honor, you don't assume that the complainant used in common with the Boy Scouts the space that they used?

The Master: I am not passing on facts at all, I was trying to get a correct representation, in the light of the testimony of the witness, that the red, the space covered in red was not, as the first sheet indicated, exclusively used—exclusively used by the gas company. Now, if

you want any more information about the Boy Scouts' space, you can ask the witness. 3763

Mr. O'Brien: Well, your Honor, how will you have the witness mark the space that is used in the ground floor and basement for a vestibule or walk-around for the vaults that are used by the various companies.

The Master: I am taking the claim of the company, that is part of the space that they used.

Mr. O'Brien: But the witness's testimony is that is used as a vestibule for approaching these various vaults.

3764

The Master: For those vaults that they use.

Mr. O'Brien: Well, it leads into the other vaults, too.

The Master: No.

Mr. O'Brien: It leads to the vaults of the Standard.

The Master: Oh, no, there is an old passageway there. Here is the pasageway to all of the other vaults over here. This is used as a passageway to those vaults used by the company.

Mr. Ransom: And for storage.

Mr. O'Brien: No, this is not storage here. This is storage here (indicating). 3765

The Master: I won't make him change that.

Mr. O'Brien: Then I better get what I want in my own way.

The Master: That exhibit as it stands now, in the light of the witness's testimony, is a picture of what he claims now correctly stated. That is all.

Mr. O'Brien: Will your Honor permit me to

3766 have the witness mark that space that is used for the appliance business?

The Master: On your map.

Mr. O'Brien: It would help the record, you know.

The Master: No, I won't let him do it.

Mr. O'Brien: Then I will have my copy marked.

The Master: My only purpose here, Mr. O'Brien, was—if he had not said anything—if you will listen to me a minute?

Mr. O'Brien: Yes.

3767 The Master: If he had not said anything on the first sheet, see what I mean, and simply had these colored, and then testified to the colors, I would not have disturbed the exhibit, but it was because of this statement on the front that red is supposed to be space used exclusively by the Consolidated Gas Company, I felt that the court in review ought to have the space marked in diagonal as indicating the space in dispute.

Q. Well, Mr. Stark, will you, taking a pencil, mark the space which you have defined as vestibule space in the basement?

3768 Mr. Chambers: May I say a word?

The Master: Yes.

Mr. Chambers: One of the misleading parts about this exhibit is this, wherein they say "used by", the blue.

The Master: Yes.

Mr. Chambers: "Used by the Consolidated Gas Company in its business". Now, the Consolidated Gas Company is supposed primarily

to be manufacturing gas for its consumers. 3769
Now, running a restaurant, certainly, you could not stretch your imagination in assuming——

The Master: (Interrupting) No, that is not misleading, Mr. Chambers, it is what you claim a wrong conclusion.

Mr. Chambers: The distinction that I draw is this, that its business is not running a restaurant.

The Master: When this record goes up on appeal, this is my distinction, when this record goes up on appeal and the Court sees it is used 3770
exclusively by Consolidated Gas, and they look through here and they see the red and they read the witness' testimony as to the rest rooms and Boy Scouts, they will say, what space is that, where is that, and they cannot identify that part of this red, they could not allocate it at all. Now, so far as the statement that it is used exclusively for gas purposes, it is easy enough for the Court—facilities operated and used by Consolidated Gas Company in its business—it is easy enough for the Court to see at once that that is a conclusion which they may or may not agree to, and I may or may not agree to that 3771
conclusion but it does not mislead me at all. On the other hand, the space, for instance, on one of these sheets, on sheet 6682, when it says red is used by the Gas Company, I remembered that he said something about a Boy Scout room, and I wanted to see what space there was for the Boy Scout room.

Mr. O'Brien: But your Honor will appre-

3772 ciate that quite a tremendous record goes up on appeal, and the poor worn out Judges getting this appeal, go to the pictures, not the record. They will go to the space, it is a time saver, and they will not go through the record.

The Master: I am trying to give the Court an absolute picture of the record. I think this does it.

Mr. O'Brien: Well, the statement, you appreciate, is a conclusion of law that it is a facility of business.

The Master: Well, we will stop this trial—

3773 Mr. Chambers: It is quite unusual, and I have had quite a good deal of experience on my part in the presentation of cases for 17 years, to allow an exhibit in the case which has upon its cover a conclusion which is vital to the issues in the case, and it seems to me it could not be other than misleading.

The Master: Well, I will take a chance on that.

Mr. Chambers: Now, if he changes the titles it might be different.

The Master: I will take a chance on that.

Mr. O'Brien: Will your Honor insert the

3774 word "Claimed" by the company to be facilities?

The Master: No, I won't change it at all any more. I think it is all right as it stands. Now you wanted the witness to mark something for you?

Mr. O'Brien: Yes, I will go ahead and get that.

By Mr. O'Brien: 3775

Q. Mr. Stark, will you, taking your pencil and referring to the page which purports to represent the basement floor in red and blue and white, mark that part of the space along the Irving Place side and part of the 15th street side, which you have stated is used for the storage of appliances?

The Master: How do you want that marked?

Mr. O'Brien: Mark it by two diagonal lines and the word "Appliances".

(Witness complies.)

The Master: The witness is marking Mr. O'Brien's copy of Exhibit 186. Let the record 3776
show that.

Q. Now, will you, taking your pencil and referring to the south side of the building on the Irving street end of the basement, mark off the space which you have called a vestibule, and the dimensions of which you have given in your testimony?

A. (Witness complies.)

Q. Just to the west of the space which you have called a vestibule, in front of the vaults, you have another space not vaults; what is that used for?

A. The first bay west of the space indicated is an office.

Q. Whose office is it? 3777

A. It is an office of the treasurer's department of the company.

Q. What is it used for?

A. I don't know.

Q. Why do you call it an office?

A. Because it has a desk, chairs, telephone and I have seen people in there.

3778 Q. Well, the treasurer has an office upstairs, hasn't he?

A. He has, indeed.

Q. And his assistants have offices upstairs?

A. They have.

Q. Is this a private office, or is it used only on special occasions, or is it some secret office that is used only for special kinds of business?

A. I presume it is only used when the vault is open.

Q. For the checking up purposes, cutting of coupons, and so on?

3779 A. I don't know.

Q. Then it is not a room that is continually from day to day used as an office?

A. I don't know how frequently it is used.

Q. Now, will you mark that part that you call a vestibule, mark the words on my copy of Exhibit 186, mark it, "Vestibule Space"?

A. (Witness complies.)

Q. And the space directly to the west of the office space is used for what purposes?

A. It is used for the storage of the building department, the operating department of the building.

Q. Supplies?

3786 A. No, sir, it has radiators, window ventilators and other things of that character, which are part of the building and not in use, stored.

Q. Well, now, the space in the middle that is used for the heavy appliances, the show room, confectionery and bake shop, gas devices, will you mark that, calling that show room?

A. Yes, sir. (Witness complies.)

Q. Now, will you mark the rest of the space in

the basement which is used for appliances in the way indicated? 3781

The Master: Just put on it what it is used for.

Mr. Ransom: It seems to me that we are not making a record on this that is at all identifying what the witness is doing.

The Master: Mr. Stark, you have marked on Mr. O'Brien's copy of sheet 6680 of Exhibit 186, the most easterly space, is it?

The Witness: Yes.

The Master: The most easterly space in red, the front portion of it facing East 15th street, 3782 you have marked as an office, and the balance of that space running through to the rear of the building, you have marked as display room, and then to the east of the southerly end of the display room, you have got a room marked "locker room", at the right end?

A. Yes, sir.

Q. And that latter room is used by what employees?

A. By the employees of the branch office on the first floor.

Q. And the office next to the display room, which is marked as what office? 3783

A. The office of the appliance department.

Q. Then it has to do exclusively with the appliance business?

A. With the sale of appliances.

Mr. O'Brien: I will ask that this page be marked for identification, your Honor.

The Master: That will be defendant's Exhibit for identification.

(The sheet referred to was then marked Exhibit I for identification).

Recess.

3784 AFTER RECESS

By Mr. O'Brien:

Q. Mr. Stark, I will talk rather rapidly, and you get your pencil working. Did we finish on the basement?

A. I think we did, yes, sir.

Q. All right, we will turn to the ground floor, being sheet 6681 of this building. This space is all used for appliances, is it?

The Master: Indicating the space to the extreme left of the plan.

Mr. O'Brien: The space marked in red.

3785 A. The space on the left is not used for appliances.

Q. That space is used for the branch office?

A. That is right.

Q. And in that branch office you have already testified they do business in connection with appliances for the territory covered by that branch office?

A. And also all other business pertaining to the consumer.

Q. Yes, the usual business.

By the Master:

3786 Q. The general commercial office?

A. Yes.

Q. Covering all the different branches of the business of the company?

A. Yes.

By Mr. O'Brien:

Q. Will you mark that "Partly used in connection with merchandise and business"?

The Master: No, I will let him mark "Branch Office", and you can make your own note as to what it is.

Mr. O'Brien: All right. 3787

The Master: I won't let the witness foreclose himself that way.

Mr. Ransom: These are a part, but not necessarily complete.

Mr. O'Brien: You used the word "exclusively" in connection with the red.

Mr. Ransom: I mean when he puts on there "Branch Office", that is subject to all his testimony, and that is merely an indication.

The Master: Oh, surely.

Q. Mark that "branch office".

A. (Witness complies). 3788

The Master: That is, marking it "branch office" so he can identify a space. What is the other space there?

Q. Are any of the employees of the affiliated companies stationed in that office?

A. They are not.

Q. Are the telephones that are used in that office used by any of these affiliated companies?

A. They are not.

Q. Are there any of the employees engaged or employed in that particular branch office who do any work for the affiliated companies?

A. There are not. 3789

Q. Will you turn your attention now to the other red space marked on this floor, to the west of the part you have already marked "branch office" and tell us what that is used for?

A. That is used for the display and sale of domestic appliances.

Q. It is all of the space so used?

A. All of the space is so used.

3790 Q. Will you mark it to that effect?

A. Appliance department?

Q. Appliance business.

The Master: Just as you put it, "Display and sale of appliances".

A. (Witness marks plan as requested.)

Q. The next floor is pretty nearly all yellow, indicating it is used by some other tenants than the complainant. The space in red you have already partly marked, "Boy Scouts"?

A. That is correct.

Q. The rest of the space is used for what pur-

3791 pose?

A. The display and sale of gaslighting fixtures.

Q. Will you mark it thus?

A. (Witness complies.)

Q. We now come to the—what is it, the third floor?

A. The third floor.

Q. The third floor being sheet No. 6683. Beginning with the Irving Place end of the building, what is that front used for?

A. The storage of appliances.

Q. Will you so mark all of the space thus used?

A. Would it make any difference to you to know

3792 that we are subdividing this space at the present time to enlarge the office facilities and curtail the space used by the storage of appliances?

Q. Well, this exhibit is as of what date?

The Master: July 1st.

A. This is as of July 1st.

Q. Give it to us as it was on July 1st.

A. (Marking on plan.) Storage appliances.

Q. Let me understand what you mean by storage.

The materials are packed up there, one box on top 3793
of another?

A. To the ceiling.

Q. To the ceiling?

A. In most cases.

Q. All through there?

A. Yes, sir.

Q. It is not a display room?

A. It is not a display room.

Q. Not used at all as a display room. Did they ever contemplate taking this storage down to 17th street or some of the open yards that they have or sheds for storage? 3794

A. They could not be placed in open yards because these are domestic appliances such as ranges.

Q. I mean the vacant buildings they have down on 14th or 15th street or over in 17th street.

A. I do not know that it was ever suggested that any other space be used for the storage of the appliances to be sold by Branch Two.

Q. Now, you have a space on the southern side of the building, in the middle, marked red. What is that used for?

A. That is used by the commercial department in the sale of appliances.

Q. Will you mark it there. 3795

A. There are clerks working all through there.

Q. Clerks on appliances, yes.

The Master: The clerks on sale of appliances.

A. (Witness marks on plan as directed.)

Q. And the space along the southerly line, immediately to the east, is how used?

A. There is one portion of this space which is used for the records, storage of records of Branch

3796 Two. I think that there are some records there, all of the old ledgers and all of the old books for years past are kept in part of this space, which is subdivided from the rest.

Q. Well, are you able to say what the dimensions of the space was, roughly speaking?

A. Why, roughly speaking I should say about that space is probably 40 x 60.

Q. Well, will you mark on the space 40 x 60 there?

The Master: Approximately, you mean?

Q. Approximately, yes.

3797 A. I should say it is more nearly 40 x 40, it is approximately that, yes (indicating).

Q. What you have marked there diagonally?

A. Yes.

The Master: That is storage?

The Witness: No, that is the record room of Branch Two.

The Master: Well, mark it record room of Branch Two.

The Witness: I don't know that that is the official name that they give it.

The Master: Well, that will be good enough for Mr. O'Brien's memorandum. Your testi-

3798 mony describes more fully just what it is used for.

Q. They stand up on shelves, do they, these books?

A. They are all on steel shelving.

Q. I see. Is there a custodian with the records there?

A. Not in that room, he does not have a desk or anything of that sort in the room.

Q. Now, the rest of the space in that particular red plot, is how used?

A. There is a portion of this space also used for 3799
the storage of stationery for Branch Two only.

Q. And that part you will mark?

A. I am marking this from memory, and I don't know how accurate it will be, but I should say that it would be very nearly all of that area (indicating).

Q. Well, you are marking now the red space right near the staircase of the building?

A. Near the staircase?

Q. Yes.

The Master: The rest of the space is what?

Q. The rest of that particular red plot is how 3800
used, just to the east of the record room?

A. The rest of that particular space is used for the storage of mantels and glassware of the lamp division of Branch Two.

Q. These lamps are sold, are they, to consumers?

A. Yes, sir. We have to keep, or they do keep, quite a lot of glassware, such as chimneys, ornamental globes for brackets, such additions as these (indicating) for gas lighting fixtures, ornamental and plain, and they keep a variety of glassware there, and it takes quite a lot of room, because it cannot be stacked high. That is also kept on steel shelving. 3801

Q. Well, will you mark that storage of glassware and other such materials?

Mr. Ransom: Including lamps and mantels.

A. There are mantels I think kept in there, as well as the glassware. In fact, all of the storage for this lamp division of Branch Two.

The Master: The witness's notations on this map are simply for the convenience of Mr. O'Brien.

3802 Q. Now, there is another red space on this floor running almost two-thirds of the length of the 15th Street, a space about 20 feet wide?

A. 18 feet wide.

Q. 18 feet wide. How is that used?

A. This is used, a portion of it, by the collectors, who are out collecting bills from Branch Two during the day time and come in anywhere from about three to four o'clock in the afternoon and they turn in as their receipts. It is also used as a division by the Branch No. Two known as the commercial distribution department. Now, what the
3803 duties of the commercial distribution department is, I don't know.

Q. Well, these collectors collect for ranges and appliances that are put out on rental?

A. I presume they also collect for gas consumed.

Q. Yes, for both things?

A. Yes.

Q. Will you mark the part that is used by the collectors?

A. Approximately I should say that a space 18 feet wide and 35 feet long is used by the collectors.

Q. Then next to that is a room used by what you call the commercial distribution department?

3804 A. No, in between the commercial distribution department and that room is the addressograph department of Branch Two, where the bills, monthly bills and statements are sent out to consumers by the machine which types the name on them.

Q. That space is about 10 x 18?

A. That is I think used in conjunction with the mailing department of Branch Two, and the mail-

ing department and the addressograph department take up more room than you mention. 3805

Q. Well, will you mark on about the space, would you call it 40 feet long?

A. No, hardly that. I should say probably—well, the collectors and these departments which I have spoken about I think come to about that point (indicating).

Q. Well, now, will you mark that room, "Addressograph and mailing of Branch 2"?

A. I cannot be sure about these sub-dividing lines.

Q. Yes. 3806

A. (Witness complies.)

Q. Now, you have the rest of the long space on Irving Place on 15th street occupied in what way?

A. It is occupied by some portion of the clerical force of branch two and this department, and this division of the Branch 2 which is known as the commercial distribution department, but where one starts and the other leaves off I don't know, but they occupy the rest of that space.

Q. Well, now, how many people are there?

A. I don't know that; I have no idea; but I know there are a great many men in the commercial distribution department. 3807

Q. You have been in these?

A. I have been in there, yes.

Q. These are clerks, or are they itinerant——

A. No, I think most of them are outside men. I am not positive of that either.

Q. You don't know just what their work is?

A. I don't know.

3808 Q. Can you say whether their work is entirely for the complainant?

A. No, I cannot; I am not qualified to say that.

Q. Well, what are you basing your marking that all in red color, that space?

A. All this space has been assigned by an executive officer of the company to the use of the Consolidated Gas Company, and to my knowledge it is used by the Consolidated Gas Company.

Q. And it is assigned, is it, to the commercial distribution department?

A. We never change any space in the building alloted without the sanction of an executive officer.

3809 Q. Then you put it that way because an executive officer of the Company has so designated that space?

A. And it is so used.

Q. You don't know what they do; you can't say they actually work for the company, can you?

A. I have never seen their names on the payroll, if that is what you mean.

Q. Have you seen them doing work there; could you positively say of your own knowledge that they are actually working there every day for the company?

3810 A. I haven't any way of knowing that these men are actually working for the company, except they sometimes come in and are directed to that floor—when they are looking for these different departments, and in directing them to the floor, we are directing them to that particular branch of the Consolidated Gas Company for which they inquire.

Q. Do you know how many desks are in there?

A. I could not say accurately as to the number 3811
of desks in that space.

Q. Approximately, is it divided off into partitions?

A. There are one or two subdivided partitions, yes, in that space.

Q. Is there some officer in authority there if you know, officially connected with the company and doing its work?

A. A Mr. Feniman is the man in charge of all the employees in that space, yes.

Q. Mr. Feniman?

A. Yes, Mr. Feniman. 3812

Q. How long has he been there?

A. Mr. Feniman has been superintendent of Branch 2 for some months. I don't know just how many months.

Q. Not many months?

A. Well, previous to that time I know that he was superintendent of another of our branch offices.

Q. Up on Washington Heights?

A. That is it, yes.

Q. Mr. J. F. Feniman?

A. I think his initials are J. F., yes.

Q. And he is in charge now?

A. Yes, he is. 3813

Q. And you don't know the general nature of the work? Is he an adjuster?

A. Mr. Feniman an adjuster?

Q. Are the men under him adjusters?

A. I could not say. I don't know that.

Q. Do they handle complaints?

A. I don't know that.

Q. You stated that they are outside men.

3814 A. I sort of have an idea they are outside men because I go in there at certain times of the day and I do not find them there. I have been in at other times of the day and have found them there and from the nature of their clothing I should say they were outside men, yes.

Q. Do they wear uniforms?

A. Why, I don't think so, no.

Q. Don't you recognize any of these men as old faces?

A. No, I don't.

Q. There is a bit of mystic atmosphere about the work, is there? A. None whatever.

3815 The Master: I think we have had enough of that. The witness has said what he knows about it.

Mr. O'Brien: Your Honor may think of course off handedly that we are taking up your Honor's time unnecessarily, but we have here a 19 story building where 12 stories by their own statement are used by other companies, and one-third of it is actually used in the business of this company, and that is why I am going into this thing so minutely,—I mean one-third of the twelve stories left.

3816 The Master: You reach a point beyond which you do not get anywhere. This witness says that all he knows about it, as I understand, is that it is part of the commercial distribution division of Branch 2. That is as far as he goes. He does not know any more and does not claim to know any more than that.

Mr. O'Brien: I will ask the witness one or two more questions about it and then dismiss this subject.

Q. There was a commercial department called the 3817
Commercial Department, and of course you associate that with the consumers directly, do you not?

A. I would, indeed.

Q. The title "commercial distribution" takes you over into the distribution field of the company's business, doesn't it?

A. Why, I don't know. I haven't the last idea why it is called the "commercial distribution department of branch 2", because I don't know what the business of any of these men is that are in that department.

Q. Do you think that they are used to handle the 3818
thousands of complaints that come in to the company?

The Master: I will not allow that question, Mr. O'Brien.

Mr. O'Brien: I may state, your Honor, as a matter of record that a year ago, in a few months there were 275,000 complaints, and the testimony of an officer of this company in the records of the Public Service Commission is to the effect that they had each one of those 275,000 complaints attended to by their employees whose time was taken up exclusively in that kind of work. 3819

The Master: This witness cannot testify to that because he says that he does not know and I do not want any guess. It will not help us any.

Q. Is this a fair statement, then, in connection with this space,—that you have marked that because it has been signed in that way by some executive officer of the company?

3820 A. And to my best knowledge it is occupied by this department of branch 2.

The Master: Just mark it "Branch 2, Commercial Distribution."

The Witness: Yes, both "clerks and commercial distribution."

The Master: Put it that way, "both clerks and commercial distribution."

Q. Is there any part of that work pertaining to the general business of the company not confined to that particular branch?

The Master: He does not know about that.

3821 **A. I don't know.**

The Master: And if he told me I would assume that he did not know what he was talking about in view of his testimony that he don't know.

Q. Turn to sheet 6684 purporting to show the fourth floor, there is just a small portion marked in red, but most of the rest is marked in yellow. What is that used for, that red space?

A. That is used for the storage of small appliances such as gas irons, gas tubes, and other small appliances which must be kept under lock and key.

Q. This is merchandise?

3822 A. Yes, sir.

Q. Is that of branch 2 or generally of the company?

A. I am quite sure a portion of the storage belongs to branch 2.

Q. But you are not quite positive?

A. There may be other materials stored in there which pertains to some other department, but as

far as my knowledge goes it is used exclusively for 3823
branch 2.

Q. That is a T-shaped space, about what area?

A. Why, that area is about 40 feet by 30 feet, squaring it off.

Q. Will you mark that "storage of appliances"?

A. Yes.

Mr. Ransom: "Small appliances"?

The Witness: Yes.

Q. Now referring to sheet 6685 which purports to show the fifth floor, we have a small space marked in red, and is that devoted all to one use?

A. That is devoted to one use. 3824

Q. This is the American Gas Association?

A. No, sir, that is used by the Consolidated Gas Company.

Q. And for what purpose?

A. For the storage of appliances.

Q. Another floor, another room for appliances?

The Master: Don't answer that.

Q. Is it all used for that purpose?

A. Yes, the space is used entirely for the storage of appliances.

Q. Kept in there unpacked?

A. Some of them are unpacked, and some of the appliances are packed ready to go out in the dis- 3825
trict.

Q. It is a stock room?

A. Yes.

Q. Do you have a man in charge of it?

A. There is no man who stays in the space to my knowledge. That space is under the supervision I think of one of the men, a Mr. Callahan, of branch 2.

3826 Q. This stock is of the company generally or stock assigned to branch 2?

A. To branch 2.

Q. This covers how big an area—branch 2? Does it run from about 57th Street to the Battery?

A. I don't know the areas of the city map which are covered by the different branch offices of the company.

Q. You have been through that room?

A. Yes, sir.

Q. Would you say that it is entirely stocked from end to end with these appliances?

3827 A. Yes, sir.

Q. And from the floor pretty nearly to the ceiling?

A. In some cases it is not packed to the ceiling by reason of the fact that some of the appliances are very heavy, and it is part of my duty to see that they do not overload those floors.

The Master: You make them spread them out?

The Witness: Yes, so that the loads will be spread out over the girders rather than concentrated in the center of the panel.

Q. You have to inspect this from time to time?

3828 A. I do.

Q. You make a regular inspection?

A. No.

Q. A monthly inspection?

A. I haven't any regular time of going there. I am notified by some one from branch 2 as to when there is any change made in the stock. Somebody will telephone me that they are going to bring in some new radiators which are quite heavy, and they

want to consult me regarding where they shall be placed, and how they shall be placed so that the floor will not be overloaded. 3829

Q. They bring them up on a freight elevator?

A. We have an elevator.

Q. You have a series of freight elevators for them?

A. We have one elevator, a combination of a freight and passenger elevator. There is no elevator in the building which is used exclusively for freight purposes.

Q. Do any of the other companies use any of these display rooms you have spoken of for appliances? 3830

A. Not to my knowledge.

Q. Is there anything to indicate that the rooms are displaying solely the goods of the Consolidated Gas Company?

A. I don't know that.

Q. Is there any of this stock in any of the show rooms for appliances, or in any of the storage rooms, in which appliances are stored in which any of the stock belongs to the affiliated companies?

A. Not to my knowledge.

Q. Can you say positively that it is not?

A. No, I don't know. 3831

Q. You don't know?

A. I don't know.

Q. Will you mark that off, the space you have spoken of on this floor, "Storage of appliances"?

A. Yes (marking same).

Q. I now call your attention to what purports to be a diagram of the sixth floor, being plate or sheet No. 6686, and that is all yellow and blue, isn't it?

3832 A. Yes.

Q. The floor is used pretty much exclusively by what company, the Edison Company?

A. Yes.

The Master: That has all been covered.

Q. These blue spaces here are used how?

A. The blue spaces indicate the toilet rooms, the elevators, the wire shaft, the vent shaft, and space used by the New York Telephone Company, the switchboard and telephone equipment, also space used as a rest room and locker room and telephone operators.

3833 Q. Are they employees of the company, the complainant?

A. They are employees of the Consolidated Gas Company, the telephone operators.

Q. You have a common switchboard for all of these offices, haven't you?

A. There is one switchboard in the building for all of the allied companies.

Q. Where is that located?

A. On the sixth floor.

Q. Will you mark that part of the blue space that is so used?

A. (Witness complies.)

3834 Q. That is the L-shaped space in blue nearest to Irving Place?

A. That is correct.

Q. And that is an area of about 40 by 40?

A. Just about. That is correct.

Q. Does that space that you have thus marked cover the lounging room of these operators?

A. No, not now.

Q. That is just for the switchboard?

A. The switchboard, and there is the motor gen- 3835
erator and some storage batteries belonging to the New York Telephone Company in that space also.

Q. This space contains a gigantic switchboard?

A. It is, I think an 18 position switchboard. I have been informed it is the largest commercial switchboard in use in New York City exclusive of the hotels.

Q. You have there the connections with all the affiliated companies and all the stations?

A. Yes, sir.

Q. Do you know how many operators there are?

A. I do not know the exact number, but if there 3836
are 18 positions, I think there must be 20 day operators and probably two or three night operators.

Q. Where is the lounging room?

A. The lounging room is in this location (indicating), the longing room and locker room.

Q. Will you draw a line out here to the south and mark that so we can see it (indicating)? It would not appear on the blue.

A. (Witness complies.)

Q. That is where the operators rest when they get tired, from their work?

A. Yes.

Q. Mark that space switchboard. 3837

A. (Witness complies.)

Mr. Ransom: And the little room down there, the apparatus room, should be marked.

Q. And the intervening blue space next to the staircase is what?

A. Elevators and toilets.

Q. Are these toilets for the whole floor, or are

3838 they just confined in their use to the telephone operators?

A. There is one of the two toilet rooms in the westerly portion of the building assigned to the telephone girls; the other one is used by the United Electric Company.

Q. Further on toward the east you have a space marked in blue; what is that; elevators?

A. Correct.

Q. And then beyond that another space in blue is elevators?

A. Right.

3839 Q. Then at the extreme east of the building you have a blue space on the southeast corner?

A. A toilet room.

Q. That is for males, is it?

A. On different floors. It might be assigned to males, and on other floors it might be assigned to females.

Q. Is that space on each floor devoted to those uses?

A. That same space on each floor is devoted to toilet purposes.

Q. Except on the auditorium floor and the rest room floor?

3840 A. On the auditorium floor there is a toilet room and on the rest room floor there is a toilet room.

Q. And this little space here (indicating) is elevators, is it, on the extreme east line?

A. The space on the extreme east is an elevator and a pent and pipe shed adjacent to the elevators.

Q. Now, referring to sheet 6687, purporting to be the 7th floor of this building, it is almost entirely marked in yellow color.

A. That is correct. 3841

Q. And the floor is occupied by the Edison Company?

A. That is correct.

Q. And there are some blue spaces that are mapped out here covering the elevator space and lavatories and flues?

A. That is correct.

Q. And the next sheet 6688 is almost similarly marked?

A. That is correct.

Q. And occupied entirely by the Edison Company? 3842

A. That is correct.

Q. Except the small space marked in blue, which covers elevators and lavatories and flues?

A. Yes.

Q. And the next floor is similarly marked?

A. That is correct.

Q. Occupied by the Edison Company as described?

The Master: The situation is precisely the same as on the floor below?

The Witness: Correct.

The Master: And the next floor is precisely the same as that? 3843

The Witness: Yes.

Q. The next floor being 6690, being the 10th floor?

A. Yes.

The Master: Being 6690.

Q. On these floors marked in yellow, the last four or five floors that are occupied by the Edison Company, why did you put the lavatories in blue?

A. All floors are so marked in blue.

3844 By Mr. Chambers:

Q. There would not be anybody else use them except the Edison, ordinarily?

A. There might be.

Q. You mean they are open so others could?

A. Yes, and if, for instance, a company occupied the 10th floor and another company occupied the 11th floor it might be that those on the 11th might use one of the toilets on the 10th.

Q. But the Consolidated do not use them at all?

A. Beg pardon?

Q. You have none marked in blue for the Consolidated; their employes do not use them at all?

3845 A. The Consolidated employes use the toilets marked in blue on the floors the Consolidated occupy.

By Mr. O'Brien:

Q. It is a rare thing to have an employe come down four or five floors to use the lavatory of the Edison Company, isn't it?

A. Yes, it is.

Q. Don't they kill time that way?

The Master: No, Mr. O'Brien, do not let us ask that. I think this would probably be the fair explanation of it: Elevator shafts, of

3846 course, run all the way through the building and he had to mark those blue because they are partly used by the Consolidated; the vent shafts the same. The toilet pipes are used probably by the Consolidated. How he would make a mark on particular floors like the Edison floors as to the toilet fixtures being used by the Edison people I can understand is somewhat of a job. I think it can be stated on the

record that it is clear that his explanation for 3847
marking all of the elevators, stairways, wells and shafts and toilets, as commonly used by all tenants including the Consolidated, is because the pipes at least must be still considered with the fixtures used particularly for particular tenants. We do not get anywhere with a thing like that until we understand it.

Q. Sheet 6691, which purports to show the 11th floor, is almost identically used?

A. That is correct.

Q. It is all yellow except the blue covering the portion just described by his Honor, the Master? 3848

A. The facilities.

Q. Sheet 6692, purporting to cover the 12th floor, is all in red except the blue covering these common features of the building?

A. Of course with the exception in every case of the corridors, which is not rentable area.

The Master: The corridors all through these sheets are uncolored; they are white?

The Witness: They are white.

Q. Now, beginning at the Irving Place end of this building, tell me how this is occupied?

A. The westerly portion of the building, approxi- 3849
mately up to the first toilet room, which is indicated in blue, is occupied by the utilization department.

Q. All of that space?

A. That is correct.

The Master: Just mark this "Utilization" across there.

(Witness does so.)

3850 By the Master:

Q. Now, take the next section here and tell Mr. O'Brien what that is used for.

A. The next section to that point (indicating) is used by the department of meters.

By Mr. O'Brien:

Q. Of Branch 2?

A. Department of meters of the Consolidated Gas Company.

By the Master:

Q. General department of meters?

A. Yes.

3851 Q. Now take the next section and go ahead and mark that.

A. The next room to the east is occupied by the Mutual Aid Society.

The remaining space on the 15th street front is occupied by the commercial department. I think it has a separate name, having to do with appliances, the sale of appliances.

By Mr. O'Brien:

Q. When you set forth these spaces on the diagram, kindly give us approximately the dimensions actually used.

The Master: Let us mark that all first, and
3852 then you can come back on that, Mr. O'Brien. I wanted him to designate the various spaces, and then you can ask him these questions with reference to the various spaces.

By the Master:

Q. What is this space up here (indicating)?

A. The space at the extreme east end of the 12th floor is occupied by the paymaster, which is a part of the Treasurer's department.

Q. Now the next? 3853

A. The appliance department lies north of the toilet room on the southerly side of the easterly end of the building.

By Mr. O'Brien:

Q. That is the second space you have marked "Appliance Department" on this floor?

A. Yes.

By the Master:

Q. Now the next one.

A. The payroll department of the Consolidated Gas Company occupies the southerly portion west of the appliance department on the 12th floor. 3854

By Mr. O'Brien:

Q. Let me ask you right here, this payroll department does not cover the branch commercial offices and their employees, does it?

A. The payroll department, to the best of my knowledge, covers all departments of the Consolidated Gas Company.

Q. Well, are you acquainted with how they run the branch offices?

A. No, I am not.

Q. You don't know whether each branch office takes care of its own people?

A. I do not. 3855

Q. Then you don't know whether the branch office pay rolls come in here for inspection and O. K.?

A. No, I do not; I cannot tell you that.

By the Master:

Q. Mark the next space now.

A. There is a small room in the center of the building which also belongs to the appliance depart-

3856 ment. The space east of the center stairway is occupied by Mr. McLean.

By Mr. O'Brien:

Q. Just by himself?

A. I believe that he has a clerk with him.

By the Master:

Q. What is this space in the southerly end of the center of the building?

A. The center of the building at the southerly side is occupied by the department of collections and arrears.

Q. Does that include the entire space there?

3857 A. It does.

By Mr. O'Brien:

Q. Mr. Stark, have you already given us the dimensions, approximately, of the space occupied by the so-called utilization department?

A. I think that I gave you approximately that space from memory this morning.

Q. Would this refresh your memory (showing diagram to witness)?

A. I don't remember the exact area that I gave you this morning for that occupied by the utilization department.

Q. Well, how wide is the Irving Place building?

3858 A. The total width of the building on the Irving Place front, from property line to building line, is 84 feet.

Q. Well, we made that out before, we computed that to be 5,976 square feet.

A. That is just about what it is.

Q. Used by the men connected with the so-called utilization bureau?

A. That is correct.

Q. And the department of meters, can you de- 3859
scribe to us what is in that room?

A. There are three or four rooms used by the department of meters. Mr. Turner, who is in charge of that department, has an office there, and the clerks of the department, some clerks of that department, are also in that space.

Q. Well, they are not meter readers are they?

A. Mr. Turner and his clerks?

Q. Yes.

A. Oh, no, they don't read any meters.

Q. That is not a center for the repair of meters, is it? That is done at 111th Street? 3860

A. I don't know anything about how the repair of meters is handled.

Q. Didn't you ever have anything to do with that building of the Standard Company?

A. I did.

Q. You helped to look after the steel construction, didn't you?

A. No, sir, I had nothing to do with the steel construction of that building.

Q. Well, you know the Consolidated uses it, don't you?

Mr. Ransom: I object to the question as not cross-examination. We are not claiming any 3861
credit on a rate basis for this building.

The Master: I will allow the question. It has reference to the use of space in this building as a meter room.

Mr. Ransom: Exception.

Q. You know there is a use of that building by the Consolidated Company?

A. I think that the Consolidated Gas Company

3862 uses a portion of that building, just how much of it I don't know. I don't know whether it is 200 square feet or 2,000.

Q. Well, it may be more than 3,000?

A. I haven't the least idea.

Q. Have you ever been in Mr. Kelly's office, or Mr. Conine's office?

A. I have been in Mr. Conine's office, yes, sir.

Q. You have seen the work going on there?

A. I have, indeed.

Q. And he has extensive offices there, Mr. Conine and his staff of clerks?

3863 Mr. Ransom: I object to the question as incompetent and not within the scope of cross-examination.

The Master: I will allow it.

Mr. Ransom: Exception.

Q. You have been in the office, haven't you?

A. I have been in Mr. Conine's office.

Q. Now, that is a building that is how—of what dimension along along 111th Street?

Mr. Ransom: I object to the question. This witness is not called to testify regarding any 111th Street building, of any other company, it has no bearing upon any matter concerning

3864 which this witness was interrogated on direct.

The Master: I don't like to shut off an inquiry so long as I think it may be of some possible use. I will allow the question.

Mr. Ransom: Exception.

(The question was read by the reporter.)

The Witness: I don't know exactly, but I think it is about 100 feet.

The Master: Get to the point.

Q. Well, there is considerable space there used 3865
by Mr. Cornine and Mr. Kelley and their staff?

A. I don't know just exactly how much space they have in that building for their own uses.

Q. Well, you could make a guess, the same as I can, of the amount of space that is used for those purposes?

Mr. Ransom: I object to the question as immaterial and irrelevant, whether he can make a guess.

The Master: Oh, I think we have had enough on that, I will sustain the objection. The point is Mr. Cornine—what is his connec- 3866
tion with the Consolidated?

The Witness: I don't know what his connection is with the Consolidated Gas Company, to my knowledge he is not in the employ of the Consolidated Gas Company.

Q. Well, now, do you assert that as a positive fact?

A. I don't know, I said that I did not know.

Mr. Ransom: I object to the question.

The Master: Well, there is no question unanswered now. The next question, Mr. O'Brien. You were on the use of part of this 12th floor space. 3867

Mr. O'Brien: The point I was trying to bring out, your Honor, is that they have all the space on 111th Street used for meter purposes.

The Master: Yes, and they could hire a floor in the Woolworth Building, too, I suppose.

Mr. O'Brien: Here is the 111th Street build-

3868 ing with floors—floors used by the Consolidated Gas Company, and an office that is used for the conducting of all the meter business of all the affiliated companies. Now, what is the use of our beating around the bush. We might as well thresh it out as spend two or three days and find it out.

The Master: And they might need a room in this building, too.

Q. Do you know what particular branch of the meter business is conducted in what you have called here the meter department of the Consolidated

3869 Company?

A. I do not.

Q. You can't say whether it is commercial or mechanical work that is being done there?

A. I cannot.

Q. Do you know how many men are in there or employes, men or women and boys or girls?

A. In the three or four offices?

Q. Yes, in the space that you have shown marked on this page, the meter department.

A. I should say there were about five or six.

Q. Five or six, and the space that these five or six people occupy is, according to what you have drawn

3870 here upon this page 6692, about 80 feet long by 18 feet wide, isn't it?

A. It is about 18 feet wide, but not 80 feet long. I should say it is nearer 70 to 75 feet long.

Q. 75 feet long?

A. 70 to 75.

Q. Now, to that you have marked off here on the 15th Street side of this building a space called "Mutual Aid Society"?

A. Yes, sir. 3871

Q. Now, what is that society?

A. I am a member of the Mutual Aid Society, but other than that I do not know very much about it.

The Master: Well, what are the general purposes and objects of the society, and who belongs to it?

The Witness: I know that I pay dues as a member of the Mutual Aid Society, and I believe if I were taken sick, that I might receive medical attendance, and if I died I think I might get some insurance. I don't know, I have never been——

Mr. O'Brien: I was going to make an observation here that—— 3872

The Master: (Interrupting.) Don't, just let him answer the question.

Mr. O'Brien: That William Neckers is taken care of here.

The Witness: I am not closely affiliated with the organization so as to know just exactly what its purposes are.

The Master: Did you ever see the constitution and by-laws?

The Witness: No, I never did.

The Master: Do you know the qualifications for membership? 3873

The Witness: I do not.

The Master: Have you any notion as to whether it is or is not a society of employes of the Consolidated Gas Company, for their mutual benefit?

The Witness: I think that that is what it is, but I don't know.

3874 The Master: Do you know whether or not employes of other companies or strangers can belong to it or not?

The Witness: I don't know whether other employes of any affiliated companies belong to it or not. I am quite sure that no person who is not a member of—or an employe of the Consolidated Gas Company, is eligible to membership, but I am not positive of that, because I have never read the constitution, and I have never attended a meeting of the Society.

Mr. Chambers: I suggest they produce the
3875 constitution of this society.

The Master: The stenographer will note that suggestion.

Mr. Ransom: We have one here.

Q. Well, that space covers about what area?

A. About 18x18.

Q. I suppose the secretary's desk is in there, or several desks, are there?

A. I believe the——

Mr. Ransom: (interrupting) I produce a copy of the by-laws and constitution.

Mr. O'Brien: Well, just wait a minute until the witness answers the question.

3876 Mr. Chambers: You produced it for me, Mr. Ransom, you might let me see it. I am suspicious of the quickness with which he produces it, and I ought to have a look at it.

Mr. O'Brien: Well, answer the question.

The Witness: I am not sure how many persons occupied an office, but I think there are two.

Q. And they devote all of their time to the work 3877
of the Mutual Aid Society?

A. So far as my observation goes, yes, sir.

Q. How many organizations altogether are there in that building for gas company employes?

The Master: You need not answer that. We can figure that out ourselves, when we read the testimony.

Mr. O'Brien: Well, your Honor, we find as we go along that there is always something new.

The Master: Well, then, we will add another one to it, as we find it.

3878

Mr. Chambers: We have not heard a word about this society.

The Master: Well, it is a tempest in a teapot. Go on. None of you gentlemen are going to say now that a mutual aid society in a room 18 x 18, if that was the only thing involved in this case, was going to change this case.

Mr. O'Brien: No, your Honor, but this case, no matter how many millions, is made up by 18 x 18, and a great many more.

The Master: Well, I am in favor of mutual aid societies for employes, and a great many of them.

3879

Mr. O'Brien: Yes, if they are run lawfully and give something in return for what they get, but for camouflage purposes—register me as against—anything that is a camouflage. Mutual aid! Mutual bunk, some of them are.

Q. Now, next to that you have the appliance department for all the rest of the space along 15th street?

3880 A. Yes, that is correct.

Q. And that is a space 18 feet by how many—well, it is about half the building, isn't it?

A. I am in error there. There is the land 30 feet of that space next to the easterly end, is not chargeable to that department. The space about 18 by 30 feet that is at the present time used as a laboratory.

Q. Laboratory?

A. Yes, sir.

Q. By whom?

A. I don't know who uses it.

3881 Q. Do you call it laboratory because a name is on the door?

A. I don't believe there is any name on the door.

Q. Well, do you call it that because some one has said we will call this the laboratory?

A. No, sir; because I have been in the room and I have seen the work that has been going on in the room.

Q. Well, who works there?

A. I don't know the men's names that work in the room.

Q. After nine years you don't know the men's names?

3882 The Master: You need not answer that. He says he does not know the men's names.

Q. Do you know the man who is in charge there?

A. I do not.

Q. Do you know what particular branch of any of the companies it is connected with?

A. I do not.

Q. Can you say that the men there do not do work for the other companies?

A. I really don't know just what work goes on 3883
ere, I said.
Q. Well, what is there in there, test tubes?
A. Why, I have seen a water heater in there, a
s water heater in there.
Q. A range for cooking lunch?
A. I never saw a range for cooking lunch in
ere, but I have seen parts of gas appliances all
er that room.
Q. Do you mean such appliances as the company
als with in its merchandising department?
A. Yes, water heaters and things of that sort.
Q. Do you think they experiment with them? 3884
A. I have seen a dish washing machine in there.
don't know.
Q. Well, it is not the same place where they deal
ith the mechanics of gas making, is it?
A. I should say not.
Q. It is not a photo method institution, or any-
hing like that?
A. Oh, no, nothing like that.
Q. Well, why do you call it a laboratory and not
ome other name?
A. Why, I don't know any other name that quite
o well describes it.
Q. That sounds better than some other name, 3885
loes it?
A. Why, I don't know that there is any other
erm that could be used to describe it.
Q. Well, have you ever seen or known of the
erm laboratory to be applied to that kind of
ork—repairs to appliances?
A. I don't think——

The Master: He did not say this was repairs to appliances.

3886 The Witness: I don't think that is repairs to appliances, in fact I am quite sure it is not, for the reason that if it were used for the repairs of appliances, there would be a number of the same sort of appliances there, probably. All that I have seen is miscellaneous parts of different appliances. I have seen complete appliances there, such as a dish washing machine.

Q. Well, the space just to the south of that is also used by the appliance department, marked by you on this sheet, it is a space 18 or 20 feet by something, how many?

3887 A. I should say it is wider than that, I should say it is almost 22 feet wide and about 40 feet long.

Q. And right adjacent to that lies the pay roll department?

A. That is correct.

Q. And there are some clerks there working on pay rolls?

A. Yes.

Q. To your knowledge?

A. Yes.

Q. Do you know how many?

A. Why, I could not say accurately how many, but I think that there must be at least 12 or 14

3888 young ladies working in that department.

Q. And they occupy space of what area?

A. Why, that space is about 40 by 50.

Q. 40 by 50?

A. Approximately.

Q. And by how many ladies? Twelve?

A. Twelve or fourteen young ladies; and the head of the department sits in that room, and all

of his files for the filing of the records of the de- 3889
partment.

Q. There is a little room occupied by Mr. McLean, 10 by 10?

A. Yes, sir.

Q. Who is he?

A. Mr. McLean was at one time in charge of the appliance department of the company. What his duties are now I do not know.

Q. Is he an inside man or an outside man?

A. I do not quite know what you mean, Mr. O'Brien.

Q. Well, you used that term first; I am taking 3890
your term; you used that with regard to commercial distribution fellows.

A. Why, he spends his time in the office.

Q. He does?

A. Yes.

Q. You do not know just how?

A. I do not know just how. I know that he had a great deal to do with the procurement of materials which were required during the war.

Q. Toluol?

A. No, not toluol, necessarily. In fact, I don't think he had anything to do with toluol, because those plants were built by the United States Gov- 3891
ernment.

Q. What materials do you mean?

A. I mean materials that we needed at our different stations where work was going on and which it was necessary to have a procurement order from Washington for.

Q. Was he a handy man; would you call him a handy man?

3892 A. I do not know just what you mean by a handy man.

The Master: We won't spend any more time on that, Mr. O'Brien.

Q. You said Mr. Macklin was purchasing agent?

The Master: Yes, he did.

A. Yes, I did.

Q. Can you state what Mr. McLean does now?

A. I do not know what Mr. McLean's duties are.

Q. Do you know whether he was working for the Company on July 1st of 1919?

A. I am quite sure he was, yes.

3893 By the Master:

Q. In what capacity, if you know?

A. I do not know what McLean's capacity is.

The Master: Well, we won't waste any more time on that.

By Mr. O'Brien:

Q. Who occupies this paymaster's cubbyhole down on the eastern end of the building?

A. There are two offices at the eastern end of the building which are occupied by the paymasters of the Consolidated Gas Company.

Q. They are who?

A. I know one of the paymasters' name is Mr.

3894 Rogers. The other paymasters—I do not know their names.

Q. How many of them are there altogether?

A. I do not know that. I know Mr. Rogers personally.

Q. Do they cover all the stations?

A. I do not know to what extent their territory extends.

The Master: I do not think we ought to go into such detail as to the particular work done

by particular employees. I am willing to let 3895
you go so far as to show, if you can, whether they are or not working for the Consolidated Gas Company, or for other companies, but I do not think we care much about what their particular duties are.

Q. Do they work for the Consolidated, all of these men?

A. I am sure that they do.

By the Master:

Q. So far as you know, they do.

A. Yes, they come in to my office. If my stenographer happens to be at her desk I have seen 3896
them hand her her pay envelope.

By Mr. O'Brien:

Q. You do not know whether they go into the Standard Company and hand them a pay envelope there?

A. I do not.

Q. Or into the New Amsterdam?

A. I do not.

Q. Is it customary for them to come with the envelopes?

A. They do—in the building.

Q. The claims and arrears department, have you ever been in that department? 3897

A. I have indeed.

Q. Very often?

A. Not very often, no.

Q. Who is in charge there?

A. I think Mr. Almberg is in charge there.

Q. How many men are engaged there?

A. Why, I should say seven or eight, possibly ten.

3898 Q. Do you know whether they handle the claims and arrears of the other companies or not?

A. I do not.

Q. You would say there were not more than eight men using that space?

A. There might be ten. I am not positive as to the exact number.

Q. Well, you would not say more than ten. Would you say that?

A. I am not sure. I would not even be positive about ten.

Q. Do they spend their time there or do these men go out and come back?

3899 A. Why, I could not answer you as to that either, Mr. O'Brien. I have met them coming in and going out of the building, but whether they go out for other than lunch or business appointments, I do not know. I do not know what their purposes of going out of the building are.

Q. Is the door marked that way "claims and arrears department"?

A. Claims and arrears.

Q. It does not say "Consolidated Gas Company" on the door?

A. I do not think it does, no.

3900 Q. And that space is about what area?

A. That entire space, including the narrow corridor, which runs down to the end office, is about 40 x 50.

Q. Now, we come to the auditorium floor, the 13th floor. You have marked for his Honor, the Master, a portion there "West room". Is that correct on my copy of the exhibit?

A. That is correct.

Q. And another portion marked "Auditorium", 3901
that is correctly marked on my exhibit?

A. That is correct.

Q. And the coat room is correctly marked?

A. That is correct.

Q. The lounge room and the class room?

A. That is correct.

Q. The lounge room and the class room cover an area of how many square feet?

A. About—I think I gave that this morning and I gave it from memory, but I should say that this space now is about 82 feet or 84 feet or thereabouts, by 64—60 to 64 or something of that kind.

3902

Q. 60 or 64?

A. Approximately that.

Q. 5,376 square feet?

A. That is correct.

Q. That does not include these little projections over to the coat room?

A. That does not include this space (indicating) which you——

Q. Which I have indicated?

A. Which you have indicated.

Q. The space that lies between the lounge room and the class room and the coat room?

A. No, it does not include that.

3903

Q. What is that space used for between the lounge and the coat room?

A. Those are the two sleeping rooms.

Q. Beds are in them?

A. There are beds in those rooms.

Q. And a chair?

A. There are I think two chairs in each room.

Q. Is there a looking glass?

3904 A. Yes, there is a looking glass and a chiffonier.

Mr. Ransom: What is the materiality of that?

The Master: There is none.

Mr. Ransom: It is purely to kill time.

Q. In this space here marked with a cross, will you recall what that is so I can mark it on here?

A. That is the lounge room and the class room. That is so classified with the rest of the space adjacent.

Q. So that that space would be added to the 5,376 square feet which we have already allotted to the lounge room and class room?

3905 A. That is correct.

Q. Over here the rest room covers an area of what?

A. Approximately 40 feet by 30 feet.

Q. And the rest of the space in red is occupied in what way?

A. As of July 1st this portion was occupied by the Consolidated.

Q. On the Irving Place end of the building?

A. Yes.

Q. For what purpose?

A. At that time it was occupied by the Red

3906 Cross.

Q. You did not mention the Red Cross before today, did you?

A. No, I did not.

Mr. Chambers: What is it now?

The Witness: It is now this minute occupied by the American Gas Association.

Q. Will you mark the part which on July 1st you say was occupied by the Red Cross?

A. Yes, sir. (Witness marks on plan.) 3907

Q. Will you just put "Red Cross" on that?

A. (Witness complies.)

Q. How was it occupied December 31, 1918?

A. By the Red Cross.

Q. When you say "Red Cross" do you mean a branch of the regular Red Cross Association?

A. I do not know whether it is a separate chapter or part of another chapter here in New York, but the young lady employes of the company work there evenings and during their lunch hour preparing bandages and so forth.

Q. Was it occupied in that way since April, 1917? 3908

A. I am not quite sure as to just when it was first occupied for that purpose.

Q. What was it occupied for before the Red Cross work was brought in?

A. Previous to the time it was occupied by the Red Cross, I think it was unoccupied.

Q. From the time the building was erected?

A. Correct.

Q. You were with the company when this building was finished?

A. I was.

Q. Were you there when they turned it from a 12-story into a 19-story building? 3909

A. I was.

Q. And did you have anything to do with the shoring up of the 12-story building?

Mr. Ransom: I object to the question as quite immaterial, having no relation to anything about which he has been interrogated on direct-examination.

Mr. O'Brien: It has everything to do in the

3910 world with the proposition we have brought out by the witness, your Honor. Here is something they want to charge the consumers with.

The Master: I do not know what the witness has had to do with the shoring up of the building, but I will let him answer that one question. Did you have anything to do with the shoring up of the building?

The Witness: Yes.

Q. Did you draw the plans for the shoring?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

3911 Mr. O'Brien: I take it that counsel has no objection to me making the witness my witness.

Mr. Ransom: You must confine your questions to this case and the direct examination.

The Master: I would rather it was not done at this time.

Q. What year was the building changed from twelve stories to nineteen?

A. In 1913.

Q. The work was begun in 1913 and ended some time later?

A. I do not remember.

3912 Mr. Ransom: I object to the question as quite immaterial.

Mr. O'Brien: Well, the whole of the use of this building is before us. The counsel have put in issues as far as the complaint is concerned of everything since the statute was passed.

The Master: The next question. He answered, "I don't remember", so there is nothing to pass upon.

Mr. Chambers: Was it ever occupied, that 3913
end of it, by the Consolidated?

Mr. O'Brien: He says prior to that it was vacant.

Mr. Chambers: Then it was never occupied. Why did he put it in red then?

Q. Why did you put this in red, Mr. Stark?

A. It has been, even while it was in use for Red Cross work, used at various times, for emergency purposes by the Consolidated Gas Company.

Q. In what way?

A. At one time it was not convenient to have the class room which I have described on the other 3914
end of the room, or in the other end of the room, and that was used for that purpose.

Q. Why wasn't it convenient?

A. I do not remember just what the circumstances were at this time.

Q. Haven't you already told us that you do not know the kind of instruction that was given?

A. I do.

Q. You did not know who the people were who were instructed?

A. I do not.

Q. Are you talking from hearsay when you say 3915
it was not convenient to use the other place for an instruction room, and that this was used for that purpose?

A. No.

Q. Are you speaking from direct knowledge of it?

A. I am speaking from direct knowledge of it.

Q. Then what was the instruction given, and by whom and to whom?

3916 A. I was instructed by my superior to use that room for a class room at one time.

Q. You mean on one day?

A. No, it was over a considerable period of time.

Q. You do not know who they were that came there to be instructed?

A. I do not.

Q. What did you do when you got the orders to use it for an instruction room?

A. We got ready chairs and some tables for use in the room, for those classes and put them in the room ready for use.

3917 Q. Did you see the people coming in and going out?

A. I do not know that I have ever seen them coming in or going out, because it was usually conducted—those classes were usually conducted after regular business hours, after five o'clock.

The Master: The point is here, Mr. O'Brien, how much use has this space been put to by the Consolidated Gas Company?

Mr. O'Brien: Well, it was Red Cross most of the time.

By the Master:

Q. During 1918 it was used for Red Cross work?

3918 A. It was.

Q. And 1917?

A. I think a good part of the year 1917. It may have gone back into 1916.

Q. That was before we were in the war?

A. Before we were in the war.

Q. We were already doing some Red Cross Work for foreign aid?

A. Yes, sir, that is my memory.

Q. Before they began using it for Red Cross 3919
Work was it vacant?

A. It was vacant most of the time.

Q. For how long a period?

A. From the completion of the building.

Q. Except for a short space when it was used for an instruction room?

A. That is correct.

Q. That time would go for how long, a few months?

A. Just a few months.

The Master: Now we have a very clear picture of it, from the time this building was built, 3920
this room has been practically vacant nearly all the time, except for a short period when it was used as an instruction room, and from some time in the early part of 1917 used for Red Cross purposes. The next question.

By Mr. O'Brien:

Q. And the area is how much?

A. The area is about 3,000 feet.

Q. Just east of the Red Cross room and just north of the rest room, what is that space used for?

A. That space is used for office purposes. There is a corridor between the rest room and the offices 3921
in the front.

Q. Will you just mark it off?

A. (Witness complies.)

Q. So you have a space about 18 feet by 150—or 100, rather, isn't it?

A. 70 feet.

Q. 70 feet by 18?

A. That is correct.

3922 Q. And the Irving Place side of the building, on this floor, just adjacent to the Red Cross room, that is used for offices by whom?

A. I do not know who occupies all of the space. I do know that the Treasurer's Department of the Consolidated Gas Company occupies a portion of the space. I do know that there are some clerks who were formerly on the 17th floor, in a portion of the space, but I do not know who the people are; I do not know them by name.

Q. You do not know what business they are engaged in, except that one of them is connected with the Treasurer's Department.

3923 A. I know that one of them is connected with the Treasurer's Department, but who the others are I do not know, and I do not know the name of the person in the Treasurer's Department.

Q. Are there any names on the doors?

A. I have never seen any names on the doors.

Q. Is there anything to indicate on the doors or the windows along the corridor, what the offices are for?

A. There may be, but I do not remember.

Q. Are there some desks inside the room, or is it open vacant space?

3924 A. I do not—in fact, I am quite sure I have not been in any one of those rooms in six months' time.

Q. Then from positive knowledge for the last six months you don't know what is in there?

A. I have not been in there in six months. For that reason I do not know accurately who occupies any of these offices.

Q. That space would you say is 18 feet by how much?

A. 18 by about 70.

3925

Q. 18 by 70?

A. Yes.

Q. What is that little yellow space on this floor along with the red?

A. That is the barber shop.

Q. You didn't mark that in blue color, did you?

A. No, I did not.

Q. Yet it is used by the company's employees, isn't it?

Mr. Ransom: It is rented space he says.

Q. Well, everything that is yellow is rented?

A. That is correct.

3926

Q. How did you mark space that is given away?

A. There is no space given away to my knowledge.

Q. The next floor, the 14th floor, is occupied entirely by the Edison Company except that portion that is used by the upper part of the auditorium?

A. That is correct.

Q. The blue portions, the portions marked blue are the elevators, lavatories and flues?

A. That is correct.

Q. And the next floor, the 15th floor is occupied entirely by what company?

A. The Edison Company.

3927

Q. And the next floor, sheet No. 6696, purporting to be a diagram of the 16th floor, is shown almost entirely in red except a yellow portion marked "Astoria Accounting Department."

A. Yes.

Q. Now, beginning with the Irving Place side of the building will you state how that floor is occupied?

3928 A. The entire westerly portion of the building fronting on Irving Place down as far as practically the first spot of blue indicating a toilet room, is occupied by the president and two vice presidents of the Consolidated Gas Company.

Q. You have first on the southwesterly corner of the floor a room occupied by Mr. Addicks, which is of what dimensions?

A. That room is approximately 15 feet by 21 feet.

Q. And the next room to that, to the north, is called the board room?

A. That is correct.

3929 Q. Used for meetings of the board of directors?

A. I have attended meetings in there myself, but never a meeting of the board of directors; I do not know that the board of directors meets there.

Q. Do you know whether the board of directors of other companies use this room?

A. I do not.

Q. It is a room of what dimensions?

A. That room is approximately 27 feet long and 15 feet wide.

Q. And next to that there is a telephone room?

A. That is correct.

3930 Q. Used for the executive officers only?

A. That telephone room, I think, is in connection with the president's office.

Q. And next to that to the east is a vestibule or waiting room, I take it, for the president's office?

A. No, that is an ante room between the board room and the president's office. There is also a wash basin, lavatory in that room.

Q. Then in the corner you have the office of the 3931
president which takes up a space of 30 feet?

A. 30 feet by about 18 feet.

Q. And to the east of that is a room occupied by whom?

A. The president's secretary.

Q. Who is that?

A. Mr. Weaver occupies that office.

Q. These names that are put on Exhibit No. 186 of gentlemen, were they put on here recently?

A. No, sir. As I told you this morning these sheets are lithographs of the original tracings, architectural drawings of this building, which were 3932
made when the building was built.

Q. The secretary has a room about 18 by 18?

A. No, it is hardly that,—say about 18 by 18, yes.

Q. And next to that, Mr. Pitts,—is he still there?

A. Yes, sir.

Q. Who is he?

A. He is also part of the president's staff.

Q. Secretary or confidential man?

A. I don't know his capacity; I don't know what his duties are.

Q. It is a room about 18 by 12?

3933

A. 12 by 18, that is correct.

Q. And next to him is an office 18 by 18?

A. That is correct.

Q. Occupied on July 1, 1918 by whom?

A. By Mr. Nickerson and his clerk.

Q. Who is Mr. Nickerson?

A. Mr. Nickerson is in the accounting department of the Consolidated Company, and has two or three clerks, I don't know just how many, in

3934 that office and in a small office adjacent with him.

Q. Would you call him chief auditor?

A. He had something to do with the accounts of the company; I don't know the nature of it.

Q. The next two rooms are about 18 by 18?

A. That is right.

Q. And the next room is occupied as of July 1, 1919, by Mr. Barnitz?

A. That is correct.

Q. Who is he?

A. I think he is assistant secretary of the Consolidated Gas Company.

3935 Q. You don't know what his particular duties are?

A. I do not, no, sir.

Q. And the next room to that is 18 by 10, occupied by the stenographer?

A. There are three stenographers in that room.

Q. The next room to that is a room about 18 by 18 occupied by whom?

A. That room is occupied by Mr. Brundage.

Q. What is Mr. Brundage?

A. I think Mr. Brundage is an assistant secretary of the Consolidated Gas Company.

Q. You don't know what his particular functions

3936 are?

A. I do not.

Q. You do know he is on the pay roll?

A. I have never seen a pay roll with Mr. Brundage's name on it.

Q. Do you know whether Mr. Pitt and Mr Weaver and Mr. Barnitz and Mr. Brundage are exclusively occupied by work of the complainant company?

A. To the best of my knowledge they are. 3937

Q. You don't know whether they draw salaries or bonuses or compensation from any other of the companies?

A. No, sir, I do not.

Q. Next to Mr. Brundage is what?

A. Next to Mr. Brundage is Mr. Thomas' office.

Q. Who is he, secretary?

A. No, Mr. Thomas is treasurer of the Consolidated Gas Company.

Q. He has been treasurer some time?

A. Yes, he says.

Q. And his office is about 18 by 18? 3938

A. Well, that is more nearly 16 by 18.

Q. And the next office is occupied by whom?

A. I have lost an office in here somewhere. This particular office is Mr. Thomas' office.

Q. Don't pass over anybody.

A. I think next to Mr. Barnitz is an office occupied by Mr. Reinach and a clerk.

Q. What function does he fill?

A. I don't know what Mr. Reinach's duties are.

Q. Have you ever met him?

A. Yes, many times.

Q. Officially? 3939

A. Yes.

Q. Do some business with him officially?

A. I have indeed

Q. Of what nature?

A. Mr. Reinach has taken up with me matters of improvements in the various branch offices of the company.

Q. You mean construction work?

A. Yes.

3940 Q. Engineering work?

A. Anything which would pertain to alterations or changes of a construction nature in the branch offices of the company.

Q. Do you know whether he gives all his time to the company?

A. I think that he does; I don't know.

Q. How about Mr. Brundage, is he in the constant employ of the company, or does he come and go?

A. To the best of my knowledge he is; I do not know what his duties are.

Q. You don't know whether it is executive work
3941 or mechanical or engineering or commercial work?

A. I should assume that Mr. Brundage's work is executive work.

Q. Does he ever speak to you and consult you about mechanical work?

A. I don't ever remember having Mr. Brundage speak to me about any mechanical work.

Q. Well, next to him you have this stenographer's room, which is 18 x 10, or 12?

A. Something like that, yes.

Q. And then you have a room, an office on the same line, this is 15th Street? Occupied by whom?

A. Mr. Whitely.

3942 Q. Do you know what office he fills?

A. I think Mr. Whitely is Assistant Treasurer of the Consolidated Gas Company.

Q. You are not positive?

A. I don't know.

Q. Next to him you have an office 18 x 18, is it?

A. That is correct.

Q. Used for what purpose?

A. That is part of the Treasurer's Department.

where stock transfers are recorded, and there are 3943
several clerks in that office.

Q. That is called the transfer department?

A. Transfer department, having to do with the transfer of stock of the company.

Q. Does the company do its own transferring of stock?

A. I don't know it is done.

Q. You don't know whether it is done by some trust company partly which is registrar?

A. I do not.

Q. Do they call it the transfer department of the company on the door?

3944

A. Yes. It is so on the door "Transfer Department".

Q. And how many clerks did you say there are, about?

A. Why, I know by name four people that occupy that room.

Q. Girls?

A. There is one young lady. That is five. I do know five people who occupy that room.

Q. And do you know that they are engaged on the transfer of stock?

A. I don't know what their exact duties are, no, sir.

3945

Q. Next room is another space about 18 x 18 occupied by——

A. That is occupied by the treasurer, the cashier.

Q. Who is he?

A. Of the Consolidated Gas Company. I think Mr. Gerard is the cashier of the Consolidated Gas Company.

Q. What do you mean by cashier?

3946 A. Why, it is from a Mr. Gerard that any petty cash slips which come from our department are paid.

Q. Is he under the treasurer?

A. I think yes, I think so.

Q. You have several assistant treasurers, haven't you?

The Master: He so testifies. He need not answer that again.

The Witness: I testified to one, your Honor.

The Master: One, yes.

Q. How many are there?

3947 A. I don't know but one, Mr. Whitely.

Q. Well, does the cashier's office here do business with the public, or is it something within the corporation?

A. I have never seen the cashier's office doing business with anyone else outside the company, the employes of the company.

Q. Well, may I assume from what you say that it handles petty cash matters?

Mr. Ransom: I don't think the testimony of this witness on the duties of the cashier's office is particularly competent.

Mr. O'Brien: The witness has been called to

3948 tell us how this space is used.

The Master: Objection sustained.

Q. Do you know whether the cashier does any business for any other company?

A. I don't know.

Q. The cashier's office is about 18 x 18?

A. Just about that.

Q. Now, the rest of the space from the cashier's

office so-called to the end of the building along 15th Street, is used for what purpose? 3949

A. It is used by the accounting department of the Consolidated Gas Company.

Q. It is a space 18 by——

A. 18 by approximately——

Q. 100?

A. No, it is not 100, not more than—75 feet.

Q. How many employes occupy that?

A. There is a rather crowded condition in that room, I should say.

Q. Who is the chief auditor?

A. I think Mr. Lambrick is auditor of the Consolidated Gas Company. 3950

Q. Now, on the easterly end of the building, just south of the accountants' department, you have something called here "operating ledger".

A. That is incorrectly marked. That is the office of Mr. Armstrong.

Q. Well, are any of these other names here incorrectly put on?

A. Oh, every other name on the——

Q. (Interrupting.) Well, Mr. Fisher's name ought to be on there, should it?

A. Yes, Mr. Fisher also occupies that office with Mr. Weaver. 3951

Q. And where you have operating ledger, you want to strike that out and put in Mr. Armstrong?

A. Yes, Mr. Armstrong occupies that office.

Q. A space 18 x 10?

A. A space 18 x 10, approximately.

Q. What does he do, what does he use it for?

A. That is his own office.

Q. Who is he?

3952 A. I think Mr. Armstrong's title is comptroller of the Consolidated Gas Company.

Q. You can't say what his particular functions are?

A. I don't know what his duties are.

Q. The room next to him is used for what purpose?

A. The room next to him is occupied by Mr. Lambrick, the auditor, and his clerks.

Q. That is apart from the accountancy department?

A. Why, I always understood that it was associated with the accounting department. I don't
3953 know how closely associated with it.

Q. Well, now, do you know that he has got some clerks there?

A. I do.

Q. Have you personally seen them?

A. I have.

Q. You have seen them recently?

A. I have seen them within two weeks.

Q. And they are working in there, some kind of clerical work?

A. I think the last time I was in there that I observed three young men besides Mr. Lambrick
3954 in the office, working.

Q. Now, coming back to the Irving Place end of the building next to Mr. Addicks, you have a space 10 x 18 occupied by Mr. Snyder and a boy, is that correct?

A. The boy should be a girl, or two girls.

Q. Well, if it is a girl, what work does she do?

A. Well, she assists Mr. Snyder who is Secretary to Mr. Addicks.

Q. And Mr. Addicks is vice-president? 3955
A. Yes, sir.
Q. First vice-president?
A. I think so.
Q. You have other vice-presidents?
A. Yes, we have.
Q. How many?
A. Two others that I know of.
Q. They all have offices here?
A. All have offices on this floor.
Q. And all have secretaries and clerks?
A. They all have secretaries, but all have not clerks. 3956
Q. Well, which ones lack a clerk?
A. I don't know, but Mr. Gawtry has a clerk, and I don't know that Mr. Carter has a clerk.
Q. Mr. Carter should have a clerk and a secretary. You have Mr. Carter occupying two rooms here, haven't you?
A. One is occupied by his secretary.
Q. And their rooms both of them looking to the south, southern exposure for Mr. Carter?
A. He has southern exposure, yes, sir.
Q. And the rooms are what, 18 x 18? And the other 20 x 18?
A. That subdivision is not quite correct. The 3957
secretary's room is smaller, and Mr. Carter's room is a little bit larger. The total space assigned for the two rooms is, however, correct.
Q. And between—just north of Mr. Snyder's room is a room, quite a large room, 12 x 18, used for filing purposes?
A. That is right.

3958 Q. Do you know what particular functions th vice-presidents fill?

A. No. I come in contact with all of them a different times——

Q. (Interrupting.) Some of them have a filin clerk and some have not?

A. I think they all have files.

Q. Well, outside of the president's room, yo have two waiting rooms, I see?

A. Yes, sir.

Q. And those rooms are 10 x 10, practically?

A. Just about 10 x 10 or 8 x 10.

3959 Q. And then to the east of the waiting room, yo have what?

A. Have another filing room.

Q. And in the waiting rooms you have furniture

A. There is a table, I think, and two chairs i each one of those rooms, a small table and tw chairs.

Q. And a lobby comes in, and to the east of tha you have a series of waiting rooms, four?

A. They are all not used as waiting rooms. Tw of them are used as waiting rooms, one of them i used as file room, and the other one is used for mis cellaneous storage of—why, there is a roll of pape

3960 in there for wrapping up little bundles and pack ages. There is also some rubber hose for th vacuum cleaner around there that is used aroun through this portion of the floor.

Q. Well, this whole space marked waiting roo for four rooms is an area of about 25 x 18, isn't it

A. That is just about right, yes.

Q. Now, we will go over beyond the elevators t

the east, and we will come to Mr. Carter's room, 3961
which is about 20 x 15?

A. No, it is not as large as that. That room is about 16 x 20—15 x 20.

Q. And he has a stenographer's room next to his which is 16 x 10?

A. That is about right.

Q. Then just to the east—and then outside he has several waiting rooms?

A. Yes, sir.

Q. And a mailing room?

A. A mailing room—why, that is a waiting room.

Q. Well, there are a good many people waiting 3962
to see Mr. Carter?

A. Well, all of those rooms are not used as waiting rooms.

Q. Are those names that were put on there when the plans were first made?

A. Yes.

Q. They are not indications, safe indications then, of what uses the rooms are put to at the present time?

A. As I explained this morning when this matter was brought up, these drawings were simply to indicate in color the spaces occupied by the Consolidated and other companies in the building. 3963

Q. Well, then, we better disregard and stick to your testimony if we want to know the exact use to which these rooms are put?

A. Yes.

Q. Disregard the notations on the sheets?

A. Yes.

Q. So that a lot of that open space indicating

3964 waiting rooms outside of Mr. Carter's door may be used for other business?

A. Yes.

Q. And the same as to the rooms to the east of that marked waiting rooms?

A. Yes.

Q. They are vacant now, some of them?

A. No, they are none of them vacant.

Q. Well, there is a chair or two in some of them?

A. I think there are three of them used as waiting rooms, and the rest are used as filing rooms and for other purposes for Mr. Carter.

3965 Q. Well, the public don't get up on this floor very much do they?

A. The public come to that floor more than any other floor in the building except the first floor, I think.

Q. What do you mean by the public, do you mean the consumers?

A. Not necessarily consumers, but the purchasing agent is located on this floor, and he has a great many people coming to see him. The stock transfer clerk—I have seen a line of 50 or 60 people waiting to get to the stock transfer clerk's window on the car.

3966 Q. Is that lately?

The Master: You need not answer that. I do not think the question is put seriously.

Mr. O'Brien: Well, it might go back, your Honor, to some ancient period.

The Master: Well, we don't care about that. When the stock market is active, there is a lot of people, and when it is not active there isn't so many, isn't that true?

The Witness: I presume that is the rule

Q. Well, now, this red space near the elevators 3967
to the east beyond Mr. Carter's room is used for what purpose?

A. A portion of it is used by the purchasing agent and his clerical force.

Q. What portion?

A. The easterly portion, a space about 30 x 40 feet.

Q. And that is adjacent to the floor space occupied by the Astoria accounting department?

A. That is correct.

Q. That space, you say, is occupied by the purchasing agent, Mr. Macklin? 3968

A. That is correct.

Q. And his assistants?

A. And his clerks.

Q. Has he many clerks in with him?

A. I think that, from memory—I have not counted them over, but I should say there are ten or twelve people in that space.

Q. And then is that file room still there that is indicated here?

A. Yes, that file room is there.

Q. Just adjacent to the Astoria accounting department?

A. That is correct. 3969

Q. And that is used by the Consolidated Company, to your knowledge?

A. It is used by the Consolidated accounting department.

Q. You know that, do you, to your own knowledge?

A. Yes, I am sure of that because I have been to the Consolidated accounting department to get an

3970 old bill, and it has been necessary to go to that room and I found it, with a clerk, who had procured the bill, which I was looking for, which had already been paid some time past.

Q. Coming to the next floor, sheet 6697, the 17th floor, you have it entirely marked in red, have you not, except the blue portions covering the elevators, flues and lavatories?

A. That is right.

Q. Now, at the Irving place end of the building, that is at the southwest end, you have two rooms that are marked "Mr. Bradley"?

3971 A. That is right.

Q. These rooms cover together a space of 50 by 30 would you say?

A. Oh no, not as much as that. They cover approximately 35 by 18.

Q. And Mr. Bradley is chief engineer?

A. Yes, sir.

Q. And does he use them now?

A. Yes, sir.

Q. Is he still in active service with the company?

A. Yes, sir.

Q. Was he merely a consultant?

A. To the best of my knowledge, he is in active

3972 service.

Q. Could you say that you know that, Mr. Stark?

A. I have been in to see Chief Bradley several times a week on different matters for Mr. Morris.

Q. Well, that would not indicate altogether that he is in active service?

The Master: Don't answer that.

Q. You don't know positively his work?

A. I don't know just how extensive Mr. Brad- 3973
ley's work is.

Q. Next to him there is an ante room about 18 by 10 and ——

A. That is not used as an ante room any longer. That is used for the convenience of—for space where two stenographers work.

Q. Do they work for Mr. Bradley or for Mr. Woods?

A. One of them works for Mr. Bradley, and the other one works for Mr. Woods.

Q. And that room just to the north of this stenographer's room is a room 18 by 18? 3974

A. About that, yes.

Q. Occupied by Mr. Woods?

A. That is right.

Q. And what are his duties, or what is his executive position?

A. Mr. Woods' title, I think, is engineer of manufacture.

Q. He has been with the company some time?

A. He was with the company when I came with the company.

Q. And next to his room is an ante room or stenographer's room?

A. No, there is no stenographer in there, that 3975
is an ante room.

Q. Just vacant?

A. It has four large book cases in it, a table and two chairs. It was occupied as a stenographer's room until about six weeks ago.

Q. And next to this room, and in the northwest corner of the building, is Mr. Morris' room?

A. That is correct.

3976 Q. That is, W. C. Morris, of whom Mr. Alrich spoke?

A. Yes, sir.

Q. And his title is what?

A. Engineer of construction.

Q. Engineer of construction. And then along 15th Street, to the east, run a series of offices which open on the corridor?

A. That is correct.

Q. And open into each other?

A. Not all of them, no. These are connecting doors and they may be locked at any time.

3977 Q. Well, will you state now, as we go through the 15th Street end of the building, just what the uses are to which these offices are put, if they are at present used?

A. Do you wish to have the names of the people who occupy these offices?

Q. Yes, that would be a good way to identify them.

A. The office next to Mr. Morris' office east is occupied by Mr. Morris' secretary and a stenographer.

Q. Give the dimensions, as you go along, will you?

3978 A. Well, approximately 11 by 18. The next office is occupied by myself. It is, I think, about 12 by

Q. Your name is on the door?

A. It is.

Q. And what is your title?

A. I haven't any title.

Q. Just Mr. Stark?

A. That is all. The next room is occupied by Mr. Hudson.

3979

Q. Mr. Hudson?

A. Mr. Hudson. Mr. Hudson is the supervising field engineer of the Consolidated Gas Company.

Q. Is he under Mr. Alrich?

A. He is under Mr. Morris.

Q. Well, Mr. Alrich is under Mr. Morris?

A. That is correct.

The Master: How large is that room?

The Witness: That room is approximately 14 by 18.

Q. The next room?

A. The next room is occupied by a stenographer.

3980

Q. A small room?

A. A room about 8 by 18.

Q. The next room?

A. The next room is occupied by Mr. Hunter.

Q. About 10 by 18?

A. About 10 or 11 by 18.

By Mr. O'Brien:

Q. What is his position?

A. Mr. Hunter is assistant engineer of construction.

By the Master:

Q. The next room?

A. The next room is occupied by Mr. Carpenter.

3981

Q. Who is he?

A. Mr. Carpenter is an engineer in the construction department.

Q. A room about 10 by 18?

A. About 8 by 18.

Q. The next room?

A. The next room is occupied by Mr. Franklin.

Q. Who is he?

A. Engineer of distribution.

3982 Q. What is the size of the room?

A. 10 by 18 about.

Q. The next one?

A. The next three rooms are occupied by Dr. Love, and take up a space of approximately 30 by 18.

By Mr. O'Brien:

Q. What is Dr. Love's business?

A. Dr. Love is chemist in the employ of the Consolidated Gas Company.

By the Master:

Q. The next room?

3983 A. The next room is occupied by Mr. Alrich.

Q. How large a room is that?

A. About 12 by 18.

Q. The next room?

A. The next room is occupied by a stenographer and a clerk under Mr. Alrich.

Q. How big is that room?

A. About 14 by 18.

Q. The next room?

A. The next three rooms—I don't know how they are occupied at the present time. It is a space 18 feet wide and approximately 70 feet long.

By Mr. O'Brien:

3984 Q. Then we are to disregard the partitions as shown on this exhibit?

A. No, from here to here (indicating). I don't know who has been assigned to that space. I don't know who occupies the space at the present time.

By Mr. Ransom:

Q. Will you state what instructions were given to you?

Mr. O'Brien: Oh, no.

y Mr. O'Brien:

3985

Q. It is an open space?

A. No, it is occupied.

y the Master:

Q. It is occupied?

A. Yes, sir. I was instructed by the assistant ecretary of the company some weeks ago to pre- are that space for use by some other people, but hat those people are doing, or who they are, I on't know.

y Mr. O'Brien:

Q. Still you marked it in red?

A. Yes.

3986

y the Master:

Q. What I would like to know, Mr. Stark, is hat was the last definite use that you knew was eing made of those rooms?

A. About 35 feet of that 70 feet was used by the upervisor of the building and his clerk.

Q. Up to what time?

A. Oh, up to several weeks ago.

Q. And the balance of it?

A. The balance of it was used by the street de- artment and by the treasurer's department.

Q. In the last few weeks there has been a change

3987

n the use of those rooms?

A. There has.

Q. The people who are now in there you don't now?

A. I don't know.

Q. You don't know whether they are attached to ne of the departments of the Gas Company or not?

A. I say I don't know any of them. I have seen

3988 one man in there that I know. I have seen Mr. Steele in there.

Q. Who is he?

A. I don't know who Mr. Steele is except that I have met him as Mr. Steele.

Q. Does he appear to be at work there with assistants?

A. He does.

Q. That is the space down about here (indicating)?

A. That is from there to there (indicating).

Q. Now, the next room.

3989 A. The next series of rooms to the end of the building, including the room marked "Stenographers", is occupied by the department of mains and services. In those offices are Mr. Simpson, who is head of the department of mains and services; Mr. Travis, his assistant, Mr. Shepard; Mr. Boyd. I think Mr. Kingsbury has an office there too, and there are stenographers and clerks in that space, but just which offices are occupied, except Mr. Simpson's office, I cannot say.

By Mr. O'Brien:

Q. Do you know whether these men are working for the other companies too?

3990 A. I do not.

By the Master:

Q. Now, let us settle that question once and for all. You don't know, do you, Mr. Stark, whether one or all or any of the employees of the Consolidated Gas Company, to whom you have referred or shall refer, does or has been working for other companies?

A. I do not.

By Mr. O'Brien: 3991

Q. And you do not know whether they are on the pay rolls of other companies?

A. I do not.

Q. Now, then, coming to the south end of this floor, there is a space running from the stack, pipe shaft, on the east end of the building, over to the middle of the building, the passenger elevators. What is that used for?

A. That is 75 by 40. 75 by 40 approximately, is occupied by the department of mains and services.

Q. And the balance of it?

A. The balance of it is occupied by the building 3992 department in operating the building.

Q. Will you mark on my copy of Exhibit No. 186 just what part is occupied by mains and services?

(Witness does so.)

Q. So that we have altogether on this floor an area devoted to mains and services of how much?

A. About 4,000 square feet approximately.

Q. All under Mr. Simpson?

A. Yes, sir.

Q. Now tell me what they do in this space?

A. I don't know.

Q. Well, what do you understand by the main 3993 and street department? It is the department that has to do with the laying and repairing of mains, isn't it?

A. That is my understanding of it, yes, sir.

Q. Now, most of the employees in that department are out on the street, aren't they?

A. The men that actually do the digging and repairing, I should say so.

3994 Q. Yes, and the foremen?

A. There is a certain amount of clerical work, I should think.

Q. This is not used for stock purposes; you don't keep any of the connections in this place, do you?

A. I have never seen any pipe or connections there.

Q. What have you seen there?

A. I have seen men at work at desks.

Q. How many of them?

A. I am making a rough guess; I never counted them, but I think I have seen there at one time as many as 25 to 30 men.

3995 Q. 25 to 30 men?

A. Yes, I have seen that many in there at one time; there might be lots more.

Q. What would you say was the average number you have seen using that 1000 square feet of space?

A. About what I told you, about 25 to 30 men. I very rarely go into the clerical space of that department. When I go to that department I usually go to see Mr. Simpson, Mr. Travis or Mr. Shepard.

Q. Now, there isn't any material there; there isn't anything there but papers and records?

A. I don't know even that there are papers and
3996 records there; I presume there are. I see files and shelving.

Q. Did you see files?

A. Yes.

Q. And some maps?

The Master: We have a complete enough picture of that space. You can base any argument you have as to the use of this space or the disuse to which it is put, on what we have.

Mr. O'Brien: I would like to have a better

description of the mains and—what do you 3997
call it, mains and meters?

The Witness: Mains and services.

Mr. O'Brien: The mains and services department. The men that are doing that work do not report here, the laborers, the caulkers, the watchmen, the foremen; they do not come down there, do they?

The Master: This man does not know the work of that department.

Mr. O'Brien: He has seen them there.

The Master: No, I won't allow that. All he knows, Mr. O'Brien, is that it is the mains and streets or mains and services department, and 3998
he sees tables and chairs in the place. That is all we can get out of him. You have a space of 4000 feet devoted to that purpose, and he says he usually sees 25 or 30 men around, and there are two or three head men there. That is all I am going to let you ask about that.

Q. How many desks would you say are in this space?

The Master: I will assume there were anywhere from one to 40.

Mr. O'Brien: I would not assume that, your Honor. 3999

The Master: I do not think it makes any difference.

Mr. O'Brien: This is a department that has to do with the outer air; they are not in the office as a rule.

The Master: Neither you or I are qualified to say how much clerical force or desk room they need. We are not going to waste any more time on it.

4000 Q. You know the records usually kept by the mains and services department?

A. No, sir, I do not know anything about their records.

The Master: Pass along to the next space. You have developed the point that 4,000 feet of space is used for this department.

Q. Does that cover all the space on this floor? What is this central space here?

The Master: You have space here, as I understand it, that he has not accounted for yet.

A. I stated a few moments ago that that space
4001 was used by the operating force of the building department.

Q. By the superintendent of the building?

A. No. No, there is in that space all the repairs and spare parts or lighting fixture equipment of the building—lamps, electric lamps kept in stock for replacement, glassware for replacement of the fixtures, and also the lockers for the men who maintain the lighting of the building, who work at night.

The Master: That space is approximately 18 by 40?

The Witness: Approximately that, yes.

Q. Over here on this end it is about 25, isn't it
4002 (indicating)?

The Master: There is an "L" to it.

A. There is a subdivision there. This little space which I have now indicated with a cross is used as a locker room for the office boys on the 16th floor.

Q. Why didn't you mark this space devoted to the service of the building and superintendence and supervision of the building in blue?

A. Why, it might have been marked in blue and 4003
been marked correctly.

The Master: It should have been marked in blue, shouldn't it? That is a mistake when it appears.

The Witness: I think it could have been marked in blue properly.

The Master: I think it is a mistake.

Q. Will you mark it blue on my exhibit?

The Master: No, I tell you what we will do: We will have the witness mark it blue on the original and all the copies of the exhibits. Will you fix this up in the morning? The Court of 4004
Appeals, you know, sometimes makes a mistake, and Mr. Stark has the privilege of making one, I suppose.

Mr. Ransom: We will admit that. Wouldn't it be better to mark it the same as the other maps were marked on this exhibit?

The Master: No, it is a different situation. I was trying to distinguish in the other situation or in the other markings an entirely different situation from this. This comes squarely within a general use for the entire building. It is not peculiar to the Consolidated at all from any angle. It comes squarely within the 4005
elevator service or the building service. Doesn't it, Mr. Stark?

The Witness: Yes, it really does.

Mr. Ransom: It is not a facility.

The Master: Yes, it is. It is really a facility for the building, just like elevators and toilets.

Mr. Ransom: I will except to your Honor's ruling on that.

4006 The Master: You need not quarrel with me, because I think the witness agrees with me. We will take the witness' statement on it. Ought not that be in blue, in the maintenance of the building, for the use of all the occupants of the building, Mr. Stark, now that your attention is called to it?

The Witness: There is just one thing in my mind on the subject. You do not indicate the lighting fixtures in each room of the building in blue and this applies particularly and peculiarly to the lighting fixtures. Why should this——

4007 The Master: No, this space, as I understand it—let us see if I am right—is a space devoted to building maintenance, isn't it?

The Witness: In part.

The Master: In part to building maintenance?

The Witness: That is correct.

The Master: So that if you go in there for a lamp you are just as apt to get it for the Edison office or the National Coal & Coke Company?

The Witness: Yes.

4008 The Master: Just as much as for the Consolidated. So it is for the general use of the building?

The Witness: That is correct.

The Master: That being so, doesn't it come squarely within the symbol of blue, that operated and used——

Mr. Ransom: Facilities operated.

The Master: Facilities operated in its busi- 4009
ness. It is not really a facility.

Mr. Ransom: It is a space for the Consolidated Gas Company, in which there may be certain work performed or certain materials kept which are a part of the operation of the building.

The Master: I think it comes squarely within facilities, using that as a broad word to indicate space and appliances used generally for the building. You have got vent shafts and elevators and things of that sort. I think the witness better mark that in blue. 4010

Mr. Ransom: I except to your Honor's ruling.

The Master: You bring your crayon down tomorrow and we will change this to blue. You better bring a rubber down, too.

Mr. Ransom: This being the Master's exhibit, I recognize your right to do with it as you wish.

Q. You did not use green on any of the pages of this?

The Master: You need not answer that question. Did he?

Mr. O'Brien: I have not come to the end yet. 4011

The Master: Suppose you look through it and see. Go on and ask the question. Would you rather have him use green for this space?

Mr. O'Brien: It might be more appropriate.

The Master: I will tell you what we will do; we will compromise it. You use this green and put your symbol on and say "space used for building maintenance."

4012 Q. You have a space here to the west of the elevators. What is the use to which that is put?

A. A portion of that space is used for storage of stationery of the Consolidated Gas Company, and the other portion is used by the stenographic and clerical force of the construction department.

The Master: Of the Consolidated Gas Company?

The Witness: Of the Consolidated Gas Company.

Q. And you will mark that off on my exhibit, and give us the area of each space.

(Witness complies, marking on plan.)

4013 By the Master:

Q. What is the area of the stationery department?

A. The stationery room is about 18 by 30.

Q. And the balance of the space what?

A. The balance of the space is——

Q. About 20 by 40?

A. Yes, about—a little more than that—20 by 50.

Q. It would square off about 20 by 50?

A. Yes, about that.

Q. That is, squaring the "L"?

4014 A. Yes.

By Mr. O'Brien:

Q. Do you know, Mr. Stark, whether the stationery stored here is just the stationery of the central office, or is it a room where is stored the supplies sent to branch offices?

A. I am quite sure that this storage is simply for the Consolidated Gas Company's general office. Nothing to do with the branch offices. It is in

harge of Mr. Macklin. I think that each one of the 4015
ranch offices has its own stationery.

Q. This space occupied as a clerical department or the construction department has how many lerks in it?

A. There are seven clerks in that department at he present time—that is, stenographers and lerks.

Q. Can you state or give us a general descrip- ion of the construction work done the past year?

Mr. Ransom: I object to that.

The Master: I will sustain the objection.

Q. Can you say what construction work is going 4016
n at the present time?

Mr. Ransom: I object to that question.

The Master: Objection sustained as not cross-examination of any matters brought out by direct.

Mr. Ransom: I do not want to have to prove expenditures by this witness too.

The Master: Objection sustained.

Mr. O'Brien: The point is this, your Honor: Of course, it is obvious that we are going to attack this wanton spending of money here in a big office building and using space of this kind. Here are all kinds of offices here, and a 4017
large space devoted to the clerical branch of the construction department. Now, if they happen to be repairing a generator house or fixing up the fence around the unused old coal gas plant, it is hard to see why they would need a clerical staff, particularly where all—almost all the important officers have a room adjacent to their office, where they have the

4018 stenographers and clerks. That is why I want to ask what work is going on now.

The Master: I won't permit it. I am going to enforce the rule as far as I can that cross examination must have relation to matters brought out on direct.

Q. I will ask the witness, noting an exception, of course, if he knows what these clerical employees do.

A. Yes.

Q. Are they under Mr. W. Cullen Morris?

A. Yes.

4019 Q. And they do what kind of work?

A. They do stenographic work, miscellaneous typing and copying, which all clerks do in construction offices. They check bills for construction work which has been performed by the construction department of the company and report the passing of those bills to the accounting department. In that office is also written all specifications for all work that the construction department does. In that office is filed all papers which are received by the construction department from one year into the other, in connection with the construction work of the company.

4020 Q. The construction department is at times engaged in construction work for other companies?

A. That is correct.

Q. And these girls or boys, or whatever they may be, take care of the correspondence and filing of papers and so on in connection with all the various work done by the engineers?

A. That is correct.

Q. Under Mr. Morris?

A. That is correct. 4021

Q. Then to that extent they are doing work for other companies?

A. It would seem so, yes.

Q. That covers all of that floor? This space (indicating)?

A. You have not asked me about that space.

The Master: I do not think so.

Q. You have now coming toward Irving place, along the south side of the building, a large rectangular space marked on the exhibit 186, "Manufacturing Department, clerical force, stenographers, files and records". I take it that was the inscription put on the plans when they were first drawn, 4022 for the building?

A. That is correct.

Q. It may not correctly note the present use?

The Master: Does it?

A. It does denote the present use.

The Master: And that is what it is used for?

The Witness: That is now what it is used for.

Q. Is that space partitioned off?

A. Only in so far as is shown on the drawings. There is one room and the corridor off the entire area. 4023

Q. And that is used for what purpose?

A. That is occupied by the assistant engineer of manufactures, Mr. R. A. Carter.

Q. And the rest of the space is used by clerks?

A. Clerks, stenographers, files and so forth, of the department, the manufacturing.

Q. About how many of them are there?

A. Why, I have never counted them, but I should

4024 say there probably are eight to ten people in that room.

Q. That space including Mr. Carter's office is a space 40 x 75?

A. Hardly that. About 40 x 70.

Q. And can you briefly describe the records that they handle?

A. I do not know what the records are, Mr O'Brien. I don't come in contact with those records at all.

Q. Do they handle the results, the manufacturing results of the various plants?

4025 A. I think that they do, but I don't know.

Q. You won't say that they don't handle manufacturing records, of all the companies affiliated with the complainant?

A. I would not, because I don't know.

Q. You know the arrangement in each manufacturing plant, do you not?

A. I don't understand what you mean.

Q. Well, you have an office in every station where you are making gas?

A. Oh, yes, there is an office in every station.

Q. And you have clerks there that take part in the records, make up the records of the results,

4026 manufacturing results?

A. Yes, there are clerks in every station.

Q. And receive the reports from the gas-making foremen and all?

A. There are clerks. I do not know just what the duties of any of the clerks in the manufacturing space are.

Q. You could not go into the detail as to just what these do?

A. I do not know. I have not the slightest idea 4027
what the men and girls who occupy that space do, what their duties are.

Q. Are they young people; are they girl clerks or men clerks?

A. They are both.

The Master: Young and old?

The Witness: Young and old.

Q. And their total is what, did you say? 10?

A. I do not not know accurately because I did not count them.

Q. 8 to 10 people?

A. Yes, I should say that. 4028

Q. None of the other companies has a manufacturing clerical department in this building that you know of?

A. I don't know. I know how the other companies use their space altogether. I know of certain portions of the space occupied by other companies, but I do not know how all the space of the other companies is used.

Q. Has this been used for that purpose from the beginning of the building?

A. It has.

Q. The next floor is the 18th, isn't it?

A. Yes, sir. 4029

Q. And that is marked entirely in red except the blue covering the elevators, lavatories and flues?

A. That is correct.

Q. Beginning with the Irving Place side of the building, what was the character of the occupancy?

A. That is the drafting room of the Consolidated Gas Company.

Q. How big a space?

4030 A. Why, the total area of that space I should say was about 7,000 feet.

Q. By the drafting room do you mean the drafting room for new construction work?

A. All of the drafting that is done by the company. It might not always be new work.

Q. Does it cover any of the main work?

A. There is drafting in connection with the Department of Mains and Services done on this floor; yes, sir.

Q. It is an open space?

A. It is an open space generally.

4031 The Master: With the usual drafting tables?

The Witness: Yes, drafting tables, miscellaneous drafting tables over the room and large maps.

Mr. Ransom: Filing cases?

The Witness: Filing cases.

Q. About how many men are employed in that room?

A. The number of men employed in that room probably varies more than in any other portion of the building. At times I have seen as high as forty and fifty men.

Q. When they were putting up the plant at As-
4032 toria, you mean, don't you?

A. No, because the plant at Astoria was finished about the same time this building was finished. That is my memory of it. I am not sure of that.

Q. Well, when the number of men in this room was at its maximum, what work was going on of a construction character, do you recall?

A. Why, I don't remember just what work was going on when the maximum number of men were on that floor. I know that recently we have not had as many men there, because for one reason we

can't get the men, and for another reason we 4033
haven't the amount of work this very minute that we have previously had to do.

Q. Well, the use of this floor, and its importance and necessity would vary with the amount of new construction going on?

A. I should say that is correct.

Q. And the extensions of plants?

A. I should say that is correct.

By the Master:

Q. Work done in this drafting room includes work done for other companies?

A. That is true. I have seen drawings in this 4034
room that have to do with other companies.

The Master: There is no question about that I guess. Now, take the next room.

By Mr. O'Brien:

Q. I suppose you get down to about six or seven draftsmen there? Were there about six or seven draftsmen there when you were last in the room?

A. 7,000 square feet for the drafting room is too much; it is more nearly six thousand square feet.

Q. When were you last there, Mr. Stark?

A. Why, I think I was in there last Thursday or Friday. I go there very nearly every day when I 4035
am in the office.

Q. When you were last there how many men were working there?

A. I should say there were about twelve or fifteen men. There may not have been fifteen. Twelve may be more nearly correct. I did not count them.

Q. Now, over here on 15th Street, you have a small space next to the drafting room, called what?

A. That is the office of the chief draftsman.

Q. Who is the chief draftsman?

A. W. L. McIntosh.

4036 By the Master:

Q. And next to that?

A. The space next to that on the Irving Place front is also occupied by drafting tables.

By Mr. O'Brien:

Q. I mean on 15th Street?

A. On the 15th Street front, that is also occupied by drafting tables, where there are draftsmen and draftswomen, if that term is correct, that work particularly on the drawings of the Department of Mains and Services.

By the Master:

4037 Q. In the second room that you are talking about?

A. That is all one room, your Honor.

Q. The second section of it?

A. Yes, sir.

By Mr. O'Brien:

Q. That is a space of what area?

A. Well, that continues down to an indefinite point, because from time to time there are more or less people working on that sort of work. I should say that the extreme easterly drafting table is about at such a point (indicating on diagram).

Q. About 100 feet from Mr. McIntosh's room?

4038 A. No, about 80 feet from Mr. McIntosh's room.

Q. And it runs all the way back to the south of the building?

A. 80 by 18.

By the Master:

Q. And next to that?

A. On the 15th Street front is a small space, I should say about 20 by 20, that is used for the storage of miscellaneous furniture belonging to the Consolidated Gas Company.

Q. Broken down furniture?

A. Not necessarily broken down, but it may be 4039
discarded by a department for the time being, and some other department will want it next week, or have use for it, and in the meantime all such furniture is kept in that space, about 18 by 18.

By Mr. O'Brien:

Q. Take the next space?

A. The next space east of that is the supervisor of the building, who has his own desk, and the desk of the chief porter, head porter, and his clerk, the supervisor's clerk, with his records.

Q. How big a room is that?

A. About 18 by 40.

Q. Should that be red or blue, is it for the main- 4040
tenance of the building?

A. I cannot quite get that in my mind. Mr. Glynn and his porters and assistants are all employees of the Consolidated Gas Company, and I do not see that they can be considered a facility.

Q. No, but they have to do with the general maintenance of the building in which other tenants share?

A. They do, there is no question on that.

The Master: I think we will compromise on Mr. O'Brien's favorite color, green.

Q. Will you have that in mind tomorrow and 4041
mark this space and the other space used for the storing of things, and show it in green?

A. Yes.

Mr. Ransom: Without at this time passing on it?

The Master: No, I simply want this as near as possible to represent pictorially the witness' testimony as to the various uses of this space.

4042 Mr. O'Brien: I will ask your Honor to request the witness to make the draftsmens' rooms blue, because they are doing work right along for the other companies.

The Master: No, I won't do that. What I am trying to show is the use to which various rooms in this building are put, as distinguished from what the complainant claims on its theory is Consolidated Gas Company use, and what apparently is general use of the building for all tenants of the building. I am not going into the question of time and facilities used for other companies.

4043 By Mr. O'Brien:

Q. Proceed, Mr. Stark, beyond the supervisors' room there?

A. The rest of this space is occupied by some clerk of the accounting department of the Consolidated Gas Company. There are some clerks down there. They are crowded in their quarters on the 16th floor.

By the Master:

Q. That brings us to the most easterly end of the 15th Street side of the building, does it?

4044 A. Yes.

Q. So that we have now covered the entire Irving Place front and the entire 15th Street front?

A. That is right.

Adjourned to Wednesday, August 13, 1919, at 10 A. M.

Last Complainant's Exhibit—186.

Last Defendant's Exhibit—H.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 4045

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 13, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD and MR. CLARK, of Counsel for Public Service Commission. 4046
MR. O'BRIEN, of Counsel for Defendant Swann.

Mr. O'Brien: Your Honor, I want to reiterate to the Master my protest against being required to proceed with sessions consuming six hours a day, in the heated term. I think it is without reason and absolutely without regard to the rights of the defendants in this case. I ask that the time be reduced to not more than three hours a day during the summer term. 4047

The Master: Proceed.

Mr. O'Brien: The request, I assume, is overruled?

The Master: Yes, sir.

ARTHUR WILLIAM STARK resumed the stand.

CROSS-EXAMINATION (CONTINUED) BY MR. O'BRIEN:

Q. Now, Mr. Stark, at the close of the session yesterday we were talking about what floor?

4048 A. We were talking about the 18th floor.

Q. And you had described the manner of use of that portion of the building in the southeast corner?

A. No, I had not.

The Master: The witness had described the use of the entire Irving Place and 15th street sides of the building.

Q. Are the accountants who occupy the northeast corner also occupying the part which projects along the easterly side?

A. I don't know whether they run around the
4049 corner or not. That is a narrow passageway.

Q. It is 18 by 20, is it?

A. No, it is about 12 by 18, and through that space is the passageway leading to this elevator and to the two toilet rooms in the southeast corner of the building. There is an aisle maintained there at all times.

Q. Now, coming to the south section of the building, will you state how that is used, if it is used at all?

A. The most easterly room on the southerly side of the building is used by the blueprint department in which all the blueprints are made of the
4050 Consolidated Gas Company.

Q. Will you mark that on my copy of Exhibit 186?

A. (Witness marks space "Blue Print Room."

Q. And the next room to that is how occupied?

A. That is occupied by the photographer.

Q. What is his name?

A. Mr. Koloff.

Q. Whose photographs does he take?

A. He takes photographs for all departments of 4051
the Consolidated Gas Company, as directed by the chief draftsman, who is his superior.

Q. Will you mark that portion occupied by him?

A. (The witness marks space, "Photographer.")

Q. How much of a space does the photographer occupy, 40 by 10, is it?

A. Oh, it is larger than that; I should say it is about 18 by 36.

Q. Which would be 648 square feet. The next space is how occupied?

A. The next space is occupied by the photostat machine.

Q. What is the purpose and function of that 4052
machine?

A. The photostat is used to take photographs of drawings and records.

Q. Is somebody assigned to that machine?

A. There is a young man who operates that machine.

Q. Does he spend all his time there?

A. Yes.

Q. That room takes up how much space?

A. That room occupies a space about 18 by 18.

Q. 314 square feet?

A. Yes. 4053

Q. And next to him, and looking out to the south, is a room occupied by whom?

A. That room is occupied not by a person, but it is filled with shelving, and in that room are kept samples which come in from time to time in connection with the construction department work.

Q. You mean sample cement and brick and things of that kind?

4054 A. Yes, which are made part of a record of a job until the job is completed, and then those samples are useful to the department in framing other specifications and using them as samples.

Q. Will you mark that "Sample Room"?

A. (Witness does so.)

Q. And the next space?

A. The next space is used by the inspectors of the construction department of the Consolidated Gas Company.

Q. What do you call them, field men?

A. Yes.

4055 Q. Field inspectors?

A. Field inspectors.

Q. How many are there?

A. If I could have a few minutes I could name each man. I should say roughly there are probably six of these men, five or six.

Q. Is there a chief?

A. A chief inspector?

Q. Yes.

A. They all are directly responsible to Mr. Hudson, supervising field engineer.

Q. They occupy all of that L-shaped space adjacent to the stairway?

4056 A. Not all of it. They occupy the desks which they use, and the files which they have occupy a space approximately 18 feet wide and 22 feet the other dimension.

Q. Mark that "field inspectors".

(Witness does so.)

A. (Continued.) The remaining space is a lobby and passageway leading to the other rooms of the easterly end of the building, and also there are two

settees and some chairs in that space where con- 4057
tractors come in to see the inspectors from time to time.

Q. Will you mark that "lobby and waiting room"?

(Witness does so.)

Q. Then west of the staircase the space marked in red is how occupied?

A. The south central portion of the building is the file room where all the drawings of the construction department are kept in files; also the drawings of the department of mains and services.

Q. There is a custodian there, I suppose? 4058

A. There is.

Q. Anybody else?

A. I think that there is a man and a woman in that room.

Q. Will you mark that space?

(Witness marks space "file room".)

Q. That completes all of that floor?

A. It does.

Q. Are there any files in the draftsmen's room?

A. No, I don't remember that there are any files in the space occupied by the draftsmen. All the drawings are kept in the file room.

Q. The next floor is the roof, the pent house. 4059

A. Yes, sir.

Q. And that pent house covers practically the whole of the roof area?

A. No, there is a space at the Irving Place front, and the 15th Street front, running the entire length of the building on both streets, which is about 12 feet wide. The pent house occupies the remaining portion of the building area.

4060 Q. Was this pent house in the original drawings, and in the original plan of the addition to the 12-story building, making 19 stories?

A. It was.

Q. It was not an afterthought then?

A. No, it was not.

Q. Where does the superintendent and his family live?

A. I don't know the street and number of the superintendent. We have not a building superintendent. The man immediately in charge of the building is called the supervisor.

4061 Q. Well, he and his family are not quartered in the building?

A. No, they are not.

Q. And you have already fully described the restaurant and the kitchen. They occupy all of the pent house?

A. They occupy all of the pent house except the passageway, stairways, elevators and toilet rooms that may be on that level.

Q. And the elevator runs to that level, does it?

A. There are seven elevators run to that level.

The Master: Not all of them?

The Witness: Not all of the building elevators run to the top of the building, no.

4062

Q. Well, now, how is the Irving Place end occupied, Mr. Stark; is that part of the kitchen?

A. The Irving Place end?

Q. Yes.

A. The Irving Place end is used as dining rooms.

The Master: As you have already described?

The Witness: Yes, sir.

Q. And the central space is dining rooms also?

A. The central space is the kitchen, the large 4063
kitchen. There is, however, on that level an additional kitchen, which is not in use, a small kitchen, which is not used.

Q. And what are its dimensions?

A. That is, I say it is not in use. It is not in use to cook food. It is used to serve food. The dimensions of that room are practically 20 by 25 feet.

Q. And then the rest of the space to the east, then, is a dining room?

A. A dining room, is the large dining room. There is also on the level between the large dining 4064
room and the large kitchen a supply room, more immediate supplies for the kitchen.

The Master: What do you mean by the kitchen in which food is served, but not cooked?

The Witness: It is used as a service kitchen now. It was built originally to cook food.

The Master: Yes.

The Witness: But it is not used—all food is prepared in the one dining room.

The Master: In the one kitchen?

The Witness: In the one kitchen, yes.

Q. Now, is there any part of this space unoccu- 4065
pied at the present time?

A. There is no part of that level which is unoccupied. It is all used each day.

Q. Are there any lounging rooms on this level, waiting rooms?

A. There are not.

Q. Lavatories?

4066 A. There is one toilet.

Mr. O'Brien: I am through, your Honor.

The Master: Now, before Mr. Clark or Colonel Hayward cross-examine, I want this witness to correct these two spaces, the one used for the storage of lamps and the other for the superintendent, as I recall it.

The Witness: I have corrected it on this set.

By the Master.

Q. In what form.

A. That green, indicating in green the space indi-
4067 cated on the 18th floor.

Q. For what?

A. As the——

Q. Building operating department?

A. Building operating department.

Q. And on the 17th floor?

A. The 17th floor, in a similar manner in green.

Q. What is that, building operating department?

A. Building operating department.

Q. Now, on the front sheet I want you to put a green emblem and state that green represents the building operating department, space used for building operating department.

4068 A. Yes, sir. (Witness complies.)

The Master: Are the copies made to conform?

Mr. Ransom: I don't believe they have been as yet.

The Master: I think that ought to be done. Will you do that?

Mr. Ransom: We will have that done, your Honor.

Q. Now, to summarize, Mr. Clark, in this Ex- 4069
hibit 186, the space which is claimed to be used exclusively by the Consolidated Gas Company is shown in red?

A. That is correct.

Q. The facilities, that means elevators, kitchen, vent shafts and matters of that kind, toilet, are included under the term "Facilities," which are operated and used by the Consolidated Gas Company, and also used for the benefit of other tenants?

A. That is correct.

Q. They are shown in blue?

A. That is correct. 4070

Q. Now, in the space shown in red on various sheets, you have drawn diagonal lines at my request, indicating space that is claimed by the Consolidated Gas Company is used entirely for its business to which, according to your testimony, other tenants have access, or other persons have access to, like the auditorium?

A. That is correct.

Q. And the Boy Scouts?

A. That is correct.

Q. All of the space shown in yellow is used by other tenants?

A. That is correct. 4071

Q. That is the space that you have testified is under lease to other tenants?

A. That is correct.

Q. The space that is uncolored or marked white are corridors, stairways and vestibules?

A. That is correct.

Q. And the space which you have now marked

4072 green is the space that is used by the Consolidate
Gas Company for operating the building?

A. That is correct. If your Honor pleases, ther
is one point about any plan which is generall
colored in one color which is unsubdivided. Th
corridors are not indicated. If it is a rented area
the tenant does not necessarily pay rent for wha
would be a normal corridor on that floor.

The Master: I understand. Now, Mr. Clark
are you going to examine?

Mr. Clark: Yes, your Honor.

Mr. O'Brien: Do you mean that you giv
4073 him the corridor space free?

The Witness: There is a certain amount o
corridor space on each floor.

By the Master:

Q. Which is not included in the demised letting

A. That is correct.

Q. I take it the same as hiring an office in a
office building?

A. That is it.

Q. Unless you partition off the space and use i
exclusively, you are not charged for it?

A. That is correct.

Mr. Ransom: But the rental takes that int
4074 account.

The Master: The use of the halls, yes, o
course.

Cross-examination by Mr. Clark:

Q. As a matter of fact, don't they partition o
some of these halls?

A. In some parts of the building they partitio
them off, yes.

Q. In such case do they pay rent for them?

A. The manner in which that is arranged is this, 4075
we have taken a typical floor of the building and upon that there is a typical corridor. Now, if a tenant uses an entire floor of the building, they are charged for the amount of space on that floor, which would be indicated by the typical floor, and the allowance for typical floor corridor.

The Master: Let me interrupt you, Mr. Clark, will you?

By the Master:

Q. On these plans where they use halls themselves and have partitioned them off, is that shown here, or do the halls show as the typical halls that 4076
were laid out?

A. The halls show as the typical halls that were laid out.

Q. It does not show hall space actually occupied by tenants, that is partitioned off by tenants?

A. Well, I am not quite clear as to what you mean. May I look at this for a moment?

Q. Yes. Take one of these Edison floors. Now, is this in white or uncolored a typical hall?

A. That is approximately a typical hall. For instance——

Q. Is that a hall now?

A. That is a hall now. 4077

Q. In other words——

A. (Interrupting.) And in other words, sheet 691 which shows a floor colored in yellow, shows the actual space occupied for hall space?

A. That is correct.

Q. I suppose, or am I right in supposing, that the typical floor plan might include further hall space

4078 in there which is now colored in yellow, because it is actually occupied by the Edison Company?

A. It might at different portions of the floor.

Q. Yes. In other words, this hall might have run farther west?

A. That is correct.

Q. That is what I thought. So that I am correct when I say that the floor shown on sheet 669l is not necessarily the typical hall space?

A. That is correct.

Q. And some of the typical hall space is included in the yellow because the Edison people pay for it?

4079 A. Correct.

Mr. Hayward: Is there any space shown in white as indicating hall space which is fenced off?

The Witness: None.

The Master: That is what I meant.

By Mr. Clark:

Q. Is there any hall space in yellow that rent is not paid for?

A. There may be, yes.

Q. Where would such a case occur?

A. That is a typical example of it on the sheet we were just looking at.

4080 Q. That is the hall space which is in yellow and no rent is paid for it?

A. Yes.

Q. That is still an open hallway open to everybody?

A. In this particular instance, there is a door which cuts off that space from all west of it, cuts off this westerly part of the building. In other words, this tenant does not pay for the typical

all, which would run through here (indicating). 4081
On the other hand, however, the corridor at this point is shown by white. It may be that this tenant is actually paying for part of the corridor space which is shown on this drawing, because it would not be typical of the typical floor.

The Master: In other words, when they rent a floor, you charge them with the space that you figure is usable space?

The Witness: That is correct.

The Master: And you adjust the whole space to suit their convenience?

The Witness: That is correct. 4082

By Mr. Clark:

Q. Turn to page 6694. Is that space, that hall space there in 6694, left white because it is open?

A. It is open.

Q. There are no doors along any part of that hall?

A. There are doorways leading into all of the offices on the side of the corridor.

Q. Going off that hall?

A. There is a doorway at this point (indicating); that is adjacent to column No. 24 at all floors of the building.

Q. Just as there was a doorway on 6690? 4083

A. That is correct. 6691.

Q. How do you explain the fact that in this drawing the hallway is in white and in the other drawing the hallway is in yellow, on 6690?

A. On 6690 there are no subdividing partitions on the floor,—that is, a few, only cutting off the elevators and toilet rooms. This is the tenth floor plan and this floor is occupied by the New York

4084 Edison Company. They do not pay for all of th space indicated in yellow. It is assumed that the is a corridor leading through there. There a only employees wanting to get back and forth fro one end of the building to the other, and access mu be kept open to these fire escapes according to la and our insurance inspectors check us up on th to see that those passages are kept clear.

Q. Did I not understand you to say that here w an actual hall (indicating)?

A. On this floor?

Q. Yes.

4085 A. No, there is not, not on 6690.

Q. But the partitions were taken down?

A. There never were any partitions there.

Q. On 6694 the partitions are still there and t hallways are still there?

A. 6694 is as shown on this drawing.

Q. Mr. Stark, could you tell me where this tran fer of stock room is?

A. It is on the sixteenth floor of the building.

Q. Have you ever been in that room?

A. I have.

Q. Do you know what they have in there the way of records?

4086 A. No, I do not.

Q. Did you ever see a stock ledger in there?

A. No, I do not think I would know a sto ledger if I saw it.

Q. Did you ever see any books in there that a peared to be books of any company except t Consolidated Gas Company?

A. I have never seen any books in there oth than the books of the Consolidated Gas Compan

In fact I don't know that I have ever seen the 4087
name of the Consolidated Gas Company on any book that I have seen in that office.

Q. You have never noticed the matter carefully?

A. Never took any particular notice of the books in the office.

Q. The New Amsterdam Gas Company occupies some space in the basement, some space on the first floor, some space on the second floor and some space on the third floor. Is that correct?

A. That is correct.

Q. Is there any other space in the building that they occupy?

A. Only the facilities. That portion of that space 4088
indicated in blue.

Q. No other space rented by them?

A. No other space which is rented by them.

Q. Are you familiar with the New Amsterdam space; do you go in there occasionally?

A. I do, indeed.

Q. That company occupies more space than any other gas company besides the Consolidated?

A. I think that is right; yes, they do.

Q. Could you tell me whether the New Amsterdam Gas Company has a Utilization Department?

A. I do not know. 4089

Q. You never saw any space given up to the Utilization Department?

A. In this building?

Q. Yes.

A. I never have.

Q. I mean in this building. All my questions are confined to this building. Does the New Amsterdam Company have any display rooms?

4090 A. They have a display room on the first floor.

Q. Of what kind of fixtures?

A. They have a display of some lighting fixtures. They have a display of domestic appliances.

Q. How large a space is devoted to that?

A. From memory I should say it is a space about 20 by 20.

Q. Are they the same kind of fixtures that are displayed by the Consolidated Gas Company?

A. Generally speaking, yes.

Q. The Consolidated also displays on the first floor?

A. They do.

4091 Q. Where does the New Amsterdam Company get its appliances?

A. I don't know.

Q. Do you know that they have any storage space in this building?

A. I don't know that they have. I am quite sure that they have not.

Q. You are quite sure that they have no storage space here?

A. I do not know that they have any of the storage space in the building.

Q. Do they have an appliance sales room?

4092 A. An appliance sales room?

Q. Yes; such as the Consolidated has, or rental room?

A. Rental rooms?

Q. You have an appliance, rental or sales department in the Consolidated Gas Company, haven't you?

A. An appliance department.

Q. In which they sell or rent appliances; is that 4093
correct?

A. That is correct.

Q. Has the New Amsterdam Company got any such department?

A. Well, it is my understanding—I do not know how they conduct their business—that they have this display room in their commercial office on the first floor, and I presume that consumers might come in there and purchase appliances or rent appliances, just as they do in the Consolidated offices.

Q. Yet they have no storage space in the building 4094
for appliances, so far as you know?

A. I have been in most of the space they occupy, but I am quite sure they have not any storage in the building.

Q. You never heard of them calling on the Consolidated Gas Company or requisitioning the Consolidated Gas Company for appliances, did you?

Mr. Ransom: I object to the question.

The Master: I will let him say if he knows.

A. I do not know. I really do not know.

Q. Has the New Amsterdam Gas Company got any rest rooms in the space that they occupy?

A. I never have seen what might be called a rest 4095
room in any of the space that the New Amsterdam occupies.

Q. They have a meter department, have they?

A. I do not know.

Q. Did you ever see any meter department?

A. No, I never have.

The Master: In this building?

The Witness: In this building, of course.

4096 Q. How large is the New Amsterdam legal department?

A. I do not know.

Mr. Ransom: I object to the question. I do not think it is shown that there is a legal department.

The Master: The witness has already said he does not know. I have allowed these questions because I think we can get through quicker by allowing them.

Q. Is there space in the New Amsterdam Gas Company given up to a legal department, as far as
4097 you know?

A. Not that I know of.

Q. You never saw any such space?

A. No, sir.

The Master: I take it what Mr. Clark is trying to show is that the New Amsterdam is practically a subsidiary of the Consolidated, and if it sells any fixtures it gets them from the Consolidated, and if it has any legal business it does it through the Consolidated, and things of that kind. If the witness knows anything about it, he can say.

Q. You have already testified that they have no
4098 drafting department or engineering department?

A. Not in any space they occupy in our building.

Q. That applies also to the Mutual and the Standard?

A. You mean what departments?

Q. The drafting and engineering.

A. Why, in part of the space which the Mutual Company occupies, I have seen a draftsman working, yes.

Q. You have seen draftsmen? 4099

A. I have seen a draftsman working.

Q. They also do drafting for that company in the Consolidated, you testified?

A. I beg pardon.

Q. They also do drafting for the Mutual in the Consolidated drafting room, do they not?

A. I have seen drawings made for the Mutual Company in the Consolidated Drafting room, yes, sir.

Q. Has the Mutual any engineering department?

A. I do not know what the department is called, but they have an office in part of the space they occupy in the building, where there is some drafting work carried on. As to how extensive that is, or whether it could be considered engineering, I am not free to speak, because I don't know. 4100

The Master: Is there any space you have seen marked on the doors, being a legal department or utilization or engineering department, or any of these well known and established departments of the Consolidated?

The Witness: No, I have never seen any names written on any doors that would indicate such a thing.

Q. That is in the Mutual Company? 4101

A. In the Mutual Company.

The Master: The Mutual and the Standard and the New Amsterdam.

The Witness: That is in the Mutual and the Standard and the New Amsterdam.

Q. And the Astoria?

A. And the Astoria.

The Master: It may well be that they all

4102 have some departments of this kind and you not know about it?

The Witness: It could very easily be, yes.

Q. But you are quite familiar with the New Amsterdam space in the building?

A. Fairly familiar with it, yes.

Q. How often do you go through it?

A. Not at any regular intervals. I have been in it as occasion demanded, possibly once in a month, or once in two months; something of that sort.

Q. How about the Mutual space; a similar state of facts in regard to that?

4103 A. Yes.

Q. And the Standard?

A. Yes.

Q. The Astoria?

A. Yes.

By the Master:

Q. As I understand it there is only comparatively small space occupied by the Astoria Company in this whole building?

A. There is a space on the sixteenth floor used by the Astoria Company.

Q. For an accounting room, it is so marked?

A. I think that is the accounting department of

4104 the Astoria Light, Heat & Power Company.

Q. As far as you know, is that the only space they occupy in that building?

A. That is the only space they occupy in that building.

Q. And the only use they make of the space they have in that building?

A. Yes, sir.

By Mr. Clark: 4105

Q. Has the Standard Light Company a display room there?

A. I don't think they have, no.

Q. Do they have a meter department in that building?

A. Not that I know of.

Q. Are you familiar with their meter department at 111th Street?

The Master: I will not allow that.

Q. Has the Mutual Company got any display room there either for fixtures or appliances?

A. They have. 4106

Q. Where is that display room?

A. The display room is not in this building we have been talking about. It is in the easterly extension of the building.

By the Master:

Q. Now, let us understand this situation. When I hear questions with reference to a building, I understand it to mean the whole building and the extension. Now, a great many questions have been asked you about the use of space here. Do I understand that does not include the extension?

A. It does not include the extension.

Q. Do I understand that this map does not include the extension? 4107

A. This map does not include the extension.

Q. It has nothing to do with the extension?

A. It has nothing to do with the extension.

Q. How high a building is the extension building?

A. The extension building is two stories high.

4108 Q. So that in all your testimony you have drawn a distinction between this nineteen story building which is at the corner of Irving Place and 15th Street, about 84 feet on Irving Place and 300 feet on 15th Street?

A. Yes, sir.

Q. And you have excluded in every inquiry the two story extension located where?

A. Just to the east.

Q. On 15th Street?

A. On 15th Street.

By Mr. Clark:

4109 Q. Is there any connection between the two buildings?

A. There are doorways between the two buildings.

Q. Practically one building on the ground floor?

A. No. There are two doorways about three feet wide each between the easterly extension and the main building at the first floor level.

By the Master:

Q. You had better tell us, hadn't you, what is in this little extension?

A. The easterly extension is occupied by the Mutual Gas Light Company.

4110 Q. Is there a westerly extension.

A. There is not.

Q. Then let us talk about the extension. Now, that is a two story building?

A. That is correct.

Q. How is it occupied?

A. It is occupied entirely by the Mutual Gas Light Company with the exception of a portion of the basement which is occupied by the Consoli-

dated Gas Company for locker rooms and toilets 4111
for the building cleaners and porters.

Q. Which building, the extension or the main building?

A. For both, locker rooms for the cleaners and porters of both buildings.

By Mr. Hayward:

Q. The same porters take care of both buildings, don't they?

A. They do.

Q. As a matter of fact it is part of the same building?

A. It was built as an extension to this building. 4112

Q. It is under the same management?

A. Yes, sir.

Q. With the same porters and cleaners and everything?

A. Yes, sir.

Q. And with doors between the two?

A. Yes, sir.

Q. And people go back and forth?

A. Yes, sir.

By Mr. O'Brien:

Q. Didn't you say that there were lockers upstairs for the porters?

A. No, I did not. 4113

Mr. Hayward: I think this exhibit should be stricken from the record as not complete.

The Master: No, I have been thinking of that. I am going to take the exhibit as it purports to be according to the witness' testimony, as part of the building.

By Mr. Clark:

4114 Q. This Mutual display room there in the extension, how large a space does that occupy?

A. I should say a space if it was squared up of about 20 by 30.

Q. They have what kind of fixtures there?

A. They have some lighting fixtures; they also have domestic appliances on display in that space.

Q. The same kind of things that the Consolidated Company has?

A. The same thing.

Q. And the New Amsterdam has on the same floor?

4115 A. Yes, sir.

Q. In the same building?

A. That is correct.

Q. And they have a sales department there?

A. You mean where a consumer may purchase?

Q. Where a consumer may purchase or rent an appliance?

A. I suppose they have; I am quite sure they have.

Q. Do they have a store room there?

A. I don't know that they have any storage space in the building.

Q. The Standard company has none. Is there
4116 any other gas company in there except the Standard, Astoria, Mutual and New Amsterdam?

A. That is all—the Consolidated of course.

Q. Now, between the Consolidated Gas Company and these other companies are there any private telephone connections as far as you know?

A. Private telephone connections?

Q. Except through the general switchboards?

A. None that I know of; I am quite sure there 4117
are none.

Q. There are none?

A. If there were any I am sure I would know of it.

Q. Do they have any connections by mail chute or similar things in the building?

A. No, there is one mail chute for the United States Mail common to the entire building. A letter may be placed in the chute at any floor level. There are two chutes in fact.

Q. That is the ordinary mail chute?

A. The ordinary mail chute. 4118

Q. There is no intercommunication between the companies except through the regular telephone switchboard?

A. None whatever.

Q. By no means whatsoever?

A. None whatever.

By Mr. O'Brien:

Q. Mr. Stark, you know there is a connection in the various stations direct with the switchboard at Irving Place?

A. Not all stations.

Q. A great many of them?

A. A great many stations have tie lines to the 4119
switchboard in the general office building, that is correct.

Q. So if you pull the receiver off the hook, the query right away from the operator is at Irving Place, isn't it?

A. I don't know what you mean.

Q. Haven't you ever called it from some station?

A. If I am in one of the stations of the company

4120 and want to talk to the general office on the telephone, I ask for 4900 Stuyvesant, or Main Office.

The Master: What Mr. O'Brien is trying to bring out is, if the various plants of the Standard, Mutual and New Amsterdam have telephone connections with the Central Office and Irving Place?

The Witness: They have a tie line, yes; there is usually a tie line.

By Mr. Clark:

Q. Now, with regard to these three display rooms on the first floor, suppose a customer should come in to buy or rent a gas stove, how would he know
4121 which one of these places to go to?

A. I don't know.

Q. Suppose a customer that was in the New Amsterdam territory should come to the Consolidated Gas Company and want to buy a fixture what would they do, have you any idea?

A. I don't know. I am not in the commercial department, I haven't anything to do with that end of the business; I haven't the least idea.

Q. You haven't any idea whether they shunt them around or whether they let them buy from any company they happen to hit first?

4122 A. I don't know. I know I have been stopped by consumers in the hallways on the first floor of the building and asked where the New Amsterdam company was, or the Standard company or the Consolidated company; and frequently it occurs that a consumer who does not speak English very well will place a bill in front of me and ask where he can pay that bill, and I have had occasions to direct them to the proper place.

Mr. Clark: If your Honor please, that concludes my cross-examination, but I would like to

move to have this exhibit marked to show the 4123
portions of the building which the evidence has plainly indicated are used for other companies, the subsidiary companies, such as the drafting room and the engineering room. It seems to me it would clarify the exhibit considerably.

The Master: It might, but I will not require them to do it.

Mr. O'Brien: Your Honor, I will ask that my copy of Exhibit No. 186 be marked for identification.

Copy of Exhibit marked Defendant's Exhibit "J", for Identification. 4124

By Mr. O'Brien:

Q. Each of the branch offices has its display room for appliances and fixtures?

A. In every case, I think.

Q. You have been at 57th street?

A. I have indeed.

Q. You have been at the Washington Heights station?

A. I have indeed.

Q. They have quite a big showroom?

A. They have.

Q. And the Harlem section on the east side?

A. Yes. 4125

Mr. Ransom: Before the redirect, I desire to produce from the files of the company the leases which were referred to yesterday.

The Master: Are you offering them in evidence?

Mr. Ransom: I am not.

Mr. Chambers: Why not?

4126 The Master: I am not interested in wi not; I am interested as to whether he is or n

Mr. Ransom: I produce the original lea of the Consolidated Gas Company of Ne York to the Astoria Light, Heat and Pow Company, a corporation organized under t Laws of the State of New York, a lease Vault No. 3 under the basement, and Roo No. 1647, for a term of one year to commen from the 1st day of March, 1918, to end on t first day of March, 1919, at the annual rent $1,440.00.

4127 The Master: I understand, Judge Ranso that you have here a bundle of these whi you say are all of the leases to the vario tenants of this building.

Mr. Ransom: I am so informed.

The Master: And you produce them?

Mr. Ransom: I produce them.

The Master: But you do not offer them evidence?

Mr. Ransom: I do not at this time.

Mr. Chambers: I will have that marked f identification, then. I now ask that the lea produced by counsel to be marked for Iden

4128 fication, the one that Mr. Ranson has alread mentioned, being lease between the Consol dated Gas Company and the Astoria Ligh Heat & Power Company, undated, for a ter of one year beginning March 1, 1918 and te minating March 1, 1919 at an annual rent $1,440.00.

Lease marked Defendant's Exhibit "K for Identification.

Mr. Ransom: I produce lease of the Consoli- 4129
dated Gas Company of New York, landlord, to the New Amsterdam Gas Company, dated May 24, 1918; term one year beginning March 1, 1918, terminating March 1, 1919; annual rent $15,181.25; space described, vault No. 2 in the basement, the easterly portion of the ground floor as it now occupies, rooms Nos. 217, 222, 224, 225, 226, 228 to 234, inclusive, 236, 239 on the second story, and two rooms in the westerly end in the third story.

Mr. Chambers: I ask that that be marked for identification for the present. 4130

Lease marked Defendant's Exhibit "L", for Identification.

Mr. Ransom: I produce a lease of the Consolidated Gas Company of New York to Dahlstrom Metallic Door Company, made January 18, 1918, term two years four months, begins January 1, 1918, and terminates May 1, 1920, annual rent $1,912, space described 1,530 square feet of space, consisting of room 540 and all space easterly thereof fronting on East 15th street, also a supplemental agreement between the same parties, for the vacating of a certain portion of the space, made the 18th day of 4131
January, 1918.

Mr. Chambers: I ask that that lease be marked for identification.

The lease was marked Defendants' Exhibit M for identification.

Mr. Ransom: Also lease of the Consolidated Gas Company of New York to the Standard Gas Light Company, dated May 15, 1918—

4132 dated May 15th, but the year is not filled i
apparently; oh, yes, it is on the outside. Ter
one year, begins March 1, 1918, terminate
March 1, 1919; annual rent $7,000, space de
scribed vault No. 7 in the basement and room
Nos. 201, 202, 204, 206, 208, 210, 212, 213 an
220 in the second story of the building.

Mr. Chambers: I ask that that be marke
for identification.

The lease was marked Defendants' Exhibi
N for identification.

Mr. Ransom: I produce lease of the Consoli
4133 dated Gas Company of New York to the Mu
tual Gas Light Company, dated May 1, 1916
for a term of five years, to commence May 1
1916, to end on May 1, 1921, annual renta
$17,500, space described, the space colored re
on the attached prints, marked respectively
and B in the second and fourth stories, excep
ing that portion of the basement reserved fo
service in the premises 142 East 15th Street.

Mr. Chambers: I ask that that be marked fo
identification.

The lease was marked Defendants' Exhibi
O for identification.

4134 Mr. Ransom: I produce the lease of the Co
solidated Gas Company of New York to th
United Electric Light & Power Company
dated May 24, 1918, for the term of one yea
to commence on the first day of March, 191
to end on the first day of March, 1919, at th
annual rental of $35,721.25, the space de
scribed, vault No. 4 in the basement, th
westerly part of the fifth floor as now occupie

and the entire sixth floor, except such rooms as are now used for the general telephone service of the building. 4135

Mr. Chambers: I ask that that be marked for identification.

The lease was marked Defendants' Exhibit P for identification.

Mr. Ransom: I likewise produce the lease of the Consolidated Gas Company of New York to the National Coal & Coke Company of New York, dated May 8, 1918, for the term of one year, to commence of March 1, 1918, to end on the first day of March, 1919, at the annual rental of $1,500, the space described being room No. 215. 4136

Mr. Chambers: We ask that that be marked for identification.

The lease was marked Defendants' Exhibit Q for identification.

Mr. Ransom: I produce the lease of the Consolidated Gas Company of New York to the New York Edison Company, dated May 24, 1918, for the term of one year commencing March 1, 1918, and to end on the first day of March, 1919, at the annual rental of $222.-362.52; the space described being the westerly portion of the ground and fourth floor as now occupied, the entire 7th, 8th, 9th, 10th, 11th, 14th and 15th floors. 4137

Mr. Chambers: I ask that that be marked for identification.

The lease was marked Defendants' Exhibit R for identification.

Mr. Ransom: I likewise produce the lease

4138 of the Consolidated Gas Company of New York to the Electrical Refrigerating Company, Inc., for the term of one year, dated April 9, 1919, the period to commence on the 15th day of April, 1919, and to end on the 15th day of April, 1920, at the annual rental of $2,166., the space described being rooms 534, 536 and 538.

Mr. Chambers: I ask that that be marked for identification.

The lease was marked Defendant's Exhibit S for Identification.

4139 Mr. Ransom: Mr. Stark calls my attention to the fact that this lease also provides, by a special twelfth paragraph, that the premises hereby leased are now occupied by the American Gas Association, and that the party of the second part is allowed to use at the same rental rooms 214, 216 and 218 on the second floor of said building until the said American Gas Association shall vacate.

Now, I produce the lease made the 14th day of February, 1918, between the Consolidated Gas Company of New York and the National Commercial Gas Association, a corporation

4140 organized under the laws of the State of Missouri, for the term of one year to commence on the 10th day of January, 1918, to end on the 10th day of January, 1919, at the annual rent of $1,568., the space described being rooms Nos. 536, 538 and 538-A.

I likewise produce a certain memorandum of agreement dated December 30, 1918, which refers to the lease of February 4, 1918, and

renews it between the Consolidated Gas Company of New York, party of the first part, and the American Gas Association, successors to the National Commercial Gas Association, for the further term of one year from January 10, 1919, upon the same terms and conditions in all respects. 4141

Mr. Chambers: I ask that that be marked for identification.

The lease was marked Defendant's Exhibit T for Identification.

REDIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Stark, let us get the history straight as to the space occupied by the National Gas Association. 4142

A. The American Gas Association?

Q. The American Gas Association and its predecessors. What space will the American Gas Association occupy from and after July 1st, 1919?

Mr. Chambers: Well, that is now.

Mr. Ransom: It has not apparently been quite turned over. But what is the space that is being made ready for them and which they are in occupancy of.

A. The westerly portion of the auditorium floor of the building. 4143

Q. The predecessor of that association was what?

A. The National Commercial Gas Association.

Q. That is the National Commercial Gas Association and some other organization were combined into the American Gas Association?

A. That is correct.

Q. What was the other organization?

4144 A. The American Gas Institute.

Q. The American Gas Institute never occupied space in this building—or did they, do you know?

A. They never occupied space in this building.

Q. What space did the National Commercial Gas Association occupy?

A. They occupied some space on the fifth floor of the building, of the Irving Place front, towards the easterly end but not to the extreme east.

Q. Space which now has been taken over by the Electrical Refrigerating Company?

A. That is correct.

4145 Q. The National Commercial Gas Association has never occupied the present space of the American Gas Association?

A. They have never.

Q. How long has the Dahlstrom Metallic Door Company been a tenant of the building?

A. From memory I should say about four years.

Q They are in what business?

A. They manufacture steel doors and steel trim for buildings.

Q. Is the Municipal Lighting Company now a tenant of the building under lease?

A. They have not any lease in the building.

4146 Q. The lease expired and has not been renewed?

A. There is no such thing as the Municipal Lighting Company in the building now.

Q. You spoke of some rearrangements being made on the third floor with respect to storage of appliances. Will you describe just what they are, what changes are being made with reference to this Exhibit 186? Can you indicate it?

A. Indicate it on the——

Q. No, just describe it. 4147

A. The unpartitioned portion of the westerly end of the third floor is now being further subdivided for use by the Commercial Department of the Consolidated Gas Company. This subdivision includes the extending of the corridor, which is typical of almost all floors of the building, to the west and the south, forming an "L" and from this corridor there will be provided rooms on either side.

Q. As of what date will that be effective?

A. The work is now going on and will be completed some time in September of this year.

Q. Have you computed the floor space which is 4148
leased to and used by each of the tenants on each of the floors of the building?

A. I have checked the space.

Q. And is that embodied in this statement to which you referred yesterday, which was furnished to the accounting department from time to time?

A. That is correct.

Q. And have you likewise checked the rentals under these leases, according to the respective floor spaces?

A. I have.

Q. And the figures shown in this statement made as of July 1, 1919, are to your knowledge correct? 4149

A. They are.

Q. Both as to areas and as to rentals?

A. They are.

Q. The rental value per square foot being likewise shown?

A. Yes, sir.

Mr. Ransom: I offer this document in evidence.

4150 Mr. Clark: I object, your Honor. It is the same document which was offered yesterday.

Mr. Ransom: Upon cross-examination most of those facts were brought out, except the matter——

The Master: Except the rentals paid.

Mr. Ransom: Except the rentals paid.

The Master: You are now trying to get in evidence by this chart something that is in the leases.

Mr. Ransom: I am trying to get in evidence the documents which he has prepared and
4151 which he furnished to the accounting department.

Mr. Chambers: I object to this on the ground it is made from papers not yet in evidence, and appears upon its face to show the rental —and the leases are here, but not yet in evidence, the area in square feet which has not yet been shown, the rental value per square foot, which has not been shown by anybody. That is an important question in itself, the fair and reasonable value per square foot.

Mr. Ransom: It is the basis on which it is figured.

4152 Mr. O'Brien: Why, you cannot get this in; you know well you cannot get it in. It is ridiculous to offer it.

Mr. Ransom: I am sorry to disagree with you.

Mr. O'Brien: Why, the data there, your Honor, is expert testimony on real estate.

The Master: Is what you say, Mr. O'Brien, to be taken as an objection to the document?

Mr. O'Brien: Why that preliminary—— 4153

The Master: Just state your objection.

Mr. O'Brien: It ought to be said. Some one has got to say it to him.

The Master: Just make your objection.

Mr. Chambers: It is incompetent, irrelevant and immaterial, and hearsay.

The Master: All of you gentlemen join in the objection? Objection sustained.

Mr. O'Brien: And I would like to state my objection.

The Master: Well, you have it. Objection sustained on the ground it appears from the 4154 leases in evidence.

Mr. Ransom: We are not trying to prove the contents of the leases: We are trying to prove the charges and the basis of computations of the charges. Here is a memorandum which goes to the accounting department.

The Master: I will sustain the objection and allow you an exception.

Q. Are you able to state now the space occupied on each floor by the respective tenants, in square feet?

A. I can.

Q. Will you do so for the record. 4155

A. Starting from the basement, the Consolidated Gas Company occupies a space of——

Mr. O'Brien: Your Honor, just a minute. I am going to ask whether this is new testimony?

The Master: Yes, it is proper testimony.

Mr. O'Brien: I call your Honor's attention to these facts—that the examination of the

witness indicated that what he had marked as red space or had marked in red to indicate exclusively used by the Consolidated Gas Company was shown in many instances to be incorrect and unreliable. That is, his own statement was that the dimensions of the diagram were unreliable.

Mr. Ransom: He did not say the dimensions were unreliable; he said the scale was unreliable.

Mr. O'Brien: You look at the record.

Mr. Ransom: There is no such statement.

Mr. O'Brien: And further, that the statement or testimony of the witness indicates that a great deal of the space alleged to be occupied by the complainant is not used in the gas making industry or an essential part of it.

Mr. Ransom: That is subject to connection, of course.

Mr. O'Brien: The further objection I make to it is, of course, that it is not sur-rebuttal.

Mr. Ransom: Just let me state the position of the complainant.

The Master: You need not state it.

Mr. Ransom: Well, I think the record should, because I was in very much doubt, and I have a pretty clear opinion this morning—I was very much in doubt yesterday—as to what took place yesterday while Mr. O'Brien was interrogating Mr. Stark. I do not really consider that up to this moment I have begun my direct examination of Mr. Stark except for a few preliminary questions. There is an exhibit in evidence under circumstances

which your Honor will recall yesterday. Mr. 4159
O'Brien did ask Mr. Stark, whom he made his witness for all purposes, a lot of questions with respect to rough areas occupied by the different tenants. Now I am asking him to give the definite figures, floor by floor, of space which he computed, which he knows to be correct, which is certified to the accounting department of the company out of his knowledge, which forms a basis for entries or charges, or payments. It is clearly admissible.

Mr. O'Brien: I do not know of any instance 4160
where I asked the witness the area of a space occupied by another tenant.

The Master: Let me ask the witness. Are the figures you are about to give the area shown in yellow?

The Witness: They would be the area shown in yellow.

The Master: Nothing else?

The Witness: I can give also if required the area occupied by the Consolidated Gas Company.

The Master: No, I want to know now, this question relates to the area shown in yellow? 4161

The Witness: Yes, sir.

Mr. Ransom: The subdivisions of it?

The Master: I will let you state the area shown on sheet 6680, being the basement floor, as to each company. I will allow an exception to counsel.

Mr. O'Brien: May I ask preliminarily two questions or three, your Honor?

4162 By Mr. O'Brien:

Q. Mr. Stark, are you giving now figures prepared by you?

A. Figures prepared by others for me.

The Master: Checked by him, he said.

The Witness: Checked by me.

Q. Have you made the computations that you are about to read from the paper handed you by counsel?

A. I have not taken a tape measure and measured the spaces myself, no.

Q. You have taken figures that somebody else gave you?

4163

A. I have taken the figures of one of the draftsmen in our department, yes.

Q. Have you read the leases?

A. I have.

The Master: Mr. O'Brien, I am disregarding the leases. I am disregarding them. I am talking now about space occupied, not talking about leases. What is in my mind is this: The witness has said that he knows of his own knowledge that certain space was occupied by a certain company, that he has marked that space in yellow. If he has either made or

4164

checked these computations, or is prepared to say on looking at this memorandum that he knows the figures he is about to give are correct, based upon the measurements of this building as he knows them, I am going to let him testify to that. If, however, I find on inquiry of the witness, which I shall proceed to make, that he is simply going to reel off figures

given to him by somebody else, I am not going 4165
to let him do it.

Mr. O'Brien: Well, I will take it up on cross-examination.

By the Master:

Q. Mr. Stark, these figures you are about to give were prepared by a man under you?

A. Yes.

Q. They were taken, I assume, from the plan Exhibit 186.

A. They are.

Q. Did you check those figures?

A. I may not have checked each figure that has 4166
been given to me, but I checked a sufficient number of them to know that they were correct.

Q. Now, answering my question as to the space occupied by other companies in the basement, are you able with the assistance of that paper to testify orally that you know certain spaces occupied, by measuring a certain part of the area?

A. Yes.

The Master: Then go ahead.

Mr. Chambers: May I ask him a question that seems to me important?

The Master: Yes.

By Mr. Chambers: 4167

Q. How were the measurements taken, inside or outside, or how?

A. They are taken on the floors through the building where a sub-divided partition occurs, the center of the partition.

By the Master:

Q. Does it include the piers?

A. It includes the piers.

4168 Q. Will the piers take up space that is occupied?

A. Yes.

By Mr. O'Brien:

Q. Mr. Stark, may I ask you if you cannot take the diagrams on Exhibit 186 and make for us here now the same computations of the space marked yellow?

The Master: Sure, he can. He does not need to answer that. He can answer these questions.

Mr. O'Brien: I want to show your Honor, that we can have reliable information that

4169 does not depend on this witness.

The Master: I think that the information this witness will give us will be reliable enough for our purposes here.

Mr. O'Brien: Well, I will take it up on cross-examination.

The Master: You have your plan; you have got the figures, and it will be easy for you or any of the defendants to check here or there and make sure the figures given are correct.

Mr. Clark: May I ask one question?

The Master: Yes.

By Mr. Clark:

4170 Q. Did these men who computed these figures actually have this Exhibit 186 before them and make their computations from that?

A. They did.

By Mr. O'Brien:

Q. Did they have the leases before them?

A. I am quite sure that the men who did the figuring and made the measurements have never seen the leases.

Q. Did they get information as to the space occu- 4171
pied from you?

A. They did.

Q. How did you present it to them, in what form?

A. A great many times it was sent as a matter of memorandum to the chief draftsman of our department.

The Master: I don't think I will allow any of this testimony at this time. Let him figure it out. He need not do it now, he may be recalled for that purpose. If he checked them himself I will let him read from that memorandum. 4172

Mr. O'Brien: You don't mean the whole memorandum, just the space.

The Master: The area space. I think he had better check it up from the exhibit.

Mr. Ransom: Exception. I will withdraw the witness at this time.

Mr. Chambers: I have a little cross-examination.

The Master: Are you going to cross-examine on these leases, Mr. Chambers? I will mark them as exhibits the minute you ask a question about them.

Mr. Chambers: I am not going to ask about 4173
them. You can not, the way I am going to ask the question.

The Master: I warn you in advance so you will know where you are.

RECROSS-EXAMINATION BY MR. CHAMBERS:

Q. Now, you said yesterday—what association was it you said now has space in the building? I don't understand it yet. You have spoken of the

4174 National Commercial Gas Association, and the American Gas Association, and some other association. Now, what association is it, and where do they have the space there marked in yellow now?

A. The American Gas Association on July 1st occupied space on the fifth floor of the building.

Q. Did you mark that in yellow?

A. It is marked in yellow.

Q. Did you tell Mr. O'Brien where that was?

A. Mr. O'Brien didn't ask me where it was.

Q. Where is that on the fifth floor?

A. That is the space extending from column 47

4175 to just east of column 68, it looks like. That is approximately correct.

Q. What is the name of that?

A. American Gas Association.

Q. That was on July 1, 1919?

A. Yes.

Q. Now what change has taken place? Have they moved to some other floor?

A. They have moved to another floor.

Q. Which floor have they moved to?

A. To the auditorium floor.

Q. That is the 13th floor, isn't it?

A. That is correct.

4176 Q. What space there now do you say they have occupied or are going to occupy?

A. The space at the Irving Place end of the auditorium floor, approximately 3000 square feet.

Q. Where you marked a red cross yesterday?

A. That is correct.

Q. And which is on sheet No. 6693?

A. A portion of that which is in red.

Q. That should be yellow now in that case, 4177
houldn't it?

A. Yes, when the lease is consummated.

Mr. Ransom: As of the present time.

Q. Now, are there any other changes like that hat have taken place since July 1, this year?

A. Yes.

Q. Some in the yellow has moved into the red, nd *vice versa?*

A. Yes.

Q. Now where are those?

A. There is a space which was occupied on July lst by the Electrical Refrigerating Company on 4178
the second floor.

Q. Was that in yellow?

A. That is in yellow.

Q. And where was that?

A. That was a portion of the space about the center of the building on the 15th Street side.

Q. Can you just designate it on my copy?

A. Approximately between the two lines shown on your copy.

Q. Just put your initials there.

(Witness does so.)

Q. Now, where have they moved to?

A. They have taken the space which has been 4179
vacated by the American Gas Association on the fifth floor.

Q. So that is yellow moving from yellow to the yellow?

A. That is correct.

Q. Any other changes like that?

A. No, not foreign tenants.

Q. What is being done with that space left vacant by this company?

4180 A. The space left vacant by the Electrical Refrigerating Company on the second floor is now partially occupied by the supervisor of the building.

Q. Supervisor of this 15th Street building?

A. Yes.

Q. Who occupies the rest of the space?

A. There will be a small portion of the space that will be unoccupied for a time.

Q. How much does he occupy, one half or one quarter or one third?

A. He occupies about 60 per cent. of it.

4181 Q. Just a temporary occupation, is it?

A. I am quite sure it will be permanent, because that is the most desirable place in the building for the supervisor's office.

By Mr. Ransom:

Q. Was the supervisor formerly on the seventeenth floor?

A. The supervisor on July 1st was on the eighteenth floor.

The Master: The part colored green?

The Witness: The part colored green.

By Mr. Chambers:

Q. Any other changes?

4182 A. There have been no other changes of importance that I recall at this minute, even by our own company.

Q. That is, they have not moved off any of the red and somebody else moved in?

A. No.

Q. The Red Cross is out?

A. The Red Cross is out of the building.

Q. How long have they been out?

A. I don't know the exact date on which their 4183
ctivities ceased, but I should say it was shortly
fter the armistice was signed.

A. November 11, 1918?

A. Yes, sir.

Mr. Chambers: That is all.

(Witness excused.)

Mr. Ransom: May I have this marked for identification? This is the chart concerning which Mr. Stark has testified?

The chart was marked Complainant's Exhibit 187, for Identification.

4184

HENRY M. BRUNDAGE, a witness for the complainant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Brundage, where do you reside?

A. I reside at Port Chester, New York.

Q. What is your position with the Consolidated Gas Company?

A. I am one of the assistant secretaries.

Q. Where is your office?

A. At 130 East 15th Street, New York City.

Q. On what floor?

A. On the 16th floor. 4185

Q. How long have you been identified with the Consolidated Gas Company?

A. Since March, 1903.

Q. What was your business and with what companies, if any, were you connected prior to that time so far as the gas or lighting business is concerned?

A. I entered the employ of the Standard Gas

4186 Light Company in September, 1894. I was with them until October of 1901. From there I went to the United Electric Light & Power Company.

Mr. O'Brien: You mean 1894?

The Witness: 1894, 25 years ago. I was with the United Electric Light & Power Company from October, 1901, to March, 1903, since which time I have been with the Consolidated Gas Company.

Q. What was the nature of the work which you did for the Standard company and for the United company respectively before you went into the em-

4187 ploy of the Consolidated?

A. I entered the employ of the Standard Gas Light Company as a junior clerk in their general office, and during the seven years I was with them occupied every desk in their accounting department, and was finally made chief clerk of the department. When I entered the employ of the United Electric Light & Power Company, it was as chief clerk of their accounting department, which I occupied until leaving them to go with the Consolidated.

Q. The Standard Gas Light Company is in the business of manufacturing and distributing gas?

4188 A. It is.

Q. And what is the business of the United Electric Light and Power Company?

A. Manufacturing and distributing electricity.

Q. Now, since you came to the employ of the complainant, Consolidated Gas Company, what has been your duties and functions and offices down to the present time?

A. When I entered the employ of the Consoli

dated Gas Company, it was as chief clerk of their 4189
accounting department. I acted as such chief clerk until June of 1908, when I was made comptroller of the company. I remained as comptroller until May, 1910, when I was elected assistant secretary, and have since occupied that office.

Q. Now, as assistant secretary, will you describe what are your relations and functions as assistant secretary with respect to the accounts and records and the accounting department of the company?

A. I have jurisdiction and supervision, under the secretary, of the accounting department and the accounting records of the company.

4190

Q. And the accounting force?

A. And the accounting force, sir.

Q. And is it within the scope of your duties and authority to direct the keeping of the accounts of the company, and likewise authority over the employes engaged in keeping the accounts?

A. I have such authority.

Q. And do you actively and personally from time to time supervise and direct the system of accounts kept at the main office?

A. I do.

Q. And the subsidiary accounts which are required to be kept at the stations or branch offices? 4191

A. Yes.

Q. And which are reported to the accounting department at the main office?

A. Yes, sir.

Q. Would you say that you are thoroughly familiar with the accounts and records kept by the company of its property, operations and business?

Mr. O'Brien: I object to that question as incompetent, irrelevant and immaterial, it calls for a conclusion.

4192 The Master: Yes, I think counsel is right. How familiar are you with them?

The Witness: Why, I am familiar with the entire accounting procedure of the Company, your Honor.

Mr. O'Brien: Well, your Honor, I object to that.

The Master: I sustained your objection and asked the witness another question in another form, which I thought was permissible.

Mr. O'Brien: But I don't believe that—

The Master: I think the question was "Are you thoroughly familiar", asking the

4193 witness for his opinion as to how familiar he was, and I asked him how familiar he was.

Mr. O'Brien: Your Honor will note my same objection?

The Master: Same objection, yes, and it is overruled and exception.

Q. And that has been true from March, 1905?

Mr. O'Brien: The same objection, your Honor.

The Master: I will allow it; exception.

The Witness: I have.

Q. Did you in any way participate in the formu-

4194 lation of the uniform system of accounts for gas corporations applied by the Public Service Commission?

Mr. O'Brien: Same objection, your Honor. There is no proof that he has anything to do with the uniform system of accounts, or what part he played in it.

The Master: I will allow the question and exception to Mr. O'Brien.

A. I did. 4195

Q. Will you state what was your relation or participaton?

Mr. O'Brien: Your Honor, I can't see why this is pertinent.

The Master: It will qualify him as an expert, more or less.

Mr. O'Brien: I make the same objection.

The Master: Objection overruled; exception.

Mr. O'Brien: I am not concerned here, as I said here in the early days of our trial, I am not concerned with the uniform system of accounts; it does not prove anything, there is 4196
no sanctity around any system of accounts. All we are concerned with here is how much money was received and how much was paid out.

The Master: I have got your point, Mr. O'Brien, and I am going to allow that question and give you an exception.

Mr. O'Brien: Well, it does not qualify the witness because he may know something about it? We all know something about it. They print it in pamphlet form, the Public Service Commission.

The Master: I will allow the question. 4197

Mr. O'Brien: Exception.

The Witness: At the invitation of the statisticians for both the First and the Second Districts of New York State, I attended many conferences with them, submitted suggestions as to the accounts that a gas company might properly be required to maintain and the items

4198 that should properly be entered in each of those accounts.

Q. The definitions of items?

The Master: That was your view of the way it should be done?

The Witness: Yes, your Honor.

Q. And definitions of items?

A. Yes, definitions of items.

Q. When was that, during what time, or over what period?

A. During the years—well, the bulk of it I should say was during the year 1918.

4199 Q. There were conferences held relative to the formulation of this system of accounts?

Mr. O'Brien: Same objection, your Honor. What do we care whether a C. P. A. Association held a meeting and had deliberations and all that? We are not concerned with that.

The Master: This was not a C. P. A., it was the Public Service Commission.

Mr. O'Brien: Well, I am citing that as an illustration, that he met some conferees and they talked over some system of bookkeeping. That does not qualify him, does not make their expenditures right and honest, it does not

4200 prove either the efficiency or the economy of the management of this company.

The Master: Not at all. I will overrule your objection.

Mr. O'Brien: Let me ask if counsel is endeavoring now to qualify him as an expert?

Mr. Ransom: The questions speak for themselves.

The Master: Mr. O'Brien, I am going to

allow this line of questions. When a question 4201
comes up, which I anticipate will, as to offering in evidence records and accounts to show expenditures, I am going to have the different questions discussed, but just now these questions which are purely preliminary cannot by any possibility affect any vital interest.

Mr. O'Brien: The point I want to emphasize is this, that Mr. Brundage has been handling figures for many years, as he came up from the lower desk to that of chief accountant in several big companies. Now, that doesn't put a halo around him, to say he was mixed up 4202
with any branch of the Public Service Commission.

The Master: I am not putting a halo around him.

Mr. O'Brien: It don't qualify him with me, that he met members of the Public Service Commission.

The Master: We will find out just what he knows about it.

Q. Mr. Brundage, are you a member of any associations which are made up of persons who are dealing with the accounts of utilities, or who specialize in that branch of accounting? 4203

A. I am.

Q. What?

Mr. O'Brien: Just a minute. What is the question?

The Master: He wants to know what associations he belongs to.

Mr. O'Brien: You mean accounting associations or gas associations?

4204 The Master: Specializing in this kind of work, gas companies and electric companies.

The Witness: I am a member of the accounting section of the American Gas Association; I am a member of the accounting section of the National Electric Light Association, and I am a member of the accounting committee of the Empire State Gas & Electric Association.

Mr. O'Brien: They are all gas affiliations, aren't they?

The Witness: Gas and electric.

Q. And you have been a member of those associations for a considerable number of years?

4205 A. I have.

Q. How familiar are you, would you say, with the uniform system of accounts prescribed by the Public Service Commission of the First District in 1908?

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling and exception.

A. I should say I am as familiar as any man of ordinary intelligence could be who is obliged to work under that system for a period of 12 years.

Mr. O'Brien: Would you claim to be one of the authors of it?

4206 The Witness: I would not.

Mr. O'Brien: You don't want it charged up to you, do you, Mr. Brundage?

The Master: No, I won't allow that, Mr. O'Brien. Don't answer that, Mr. Brundage.

Q. And your familiarity with this system of accounts dated from the time it was established?

A. Yes.

Q. And it included the amendments subsequently

made, so far as gas and electric corporations were concerned? 4207

The Master: Is that so?

The Witness: I am just considering whether there have been any amendments to the Public Service Commission Law.

The Master: Well, if any have been made?

The Witness: If any have been made, I am familiar with it, yes.

Q. Does the Consolidated Gas Company maintain a set of accounts and records showing the details of the operation of its business, the property acquired and retired and operating expenses and the record of the gas business done by it? 4208

A. It does.

Q. Now, Mr. Brundage, have the statisticians and accountants representing any of the defendants in this case, to your knowledge, been at work upon the books, vouchers, records, etc., of the complainant, in connection with this case?

Mr. O'Brien: I object to that.

The Master: I will allow it.

A. They have.

Q. Since about what date?

A. The first week in June, June 9th.

Q. Of this year? 4209

A. Of this year, sir.

Q. Have a number of men of that class, statisticians and accountants and the like, representing the defendants, been practically continuously at work since that time?

Mr. O'Brien: Same objection, your Honor. I can't see where this is relevant.

The Master: I will allow it.

Mr. O'Brien: Exception.

4210 A. They have.

The Master: I am allowing it, Mr. O'Brien, upon the theory that the complaint has been made from time to time as to frank disclosures. I am permitting them to show what opportunity they have given the various defendants to check up and examine and analyze their books.

Mr. Chambers: I thought we were charged with not having made any start up to July 15th.

The Master: We will see what happens. Go

4211 ahead, Mr. Ransom.

Q. Have they occupied a room or rooms in that building for that purpose?

Mr. O'Brien: I object to that, whether they have occupied a room. He will bring in those two bedrooms pretty soon. They occupied a room——

Mr. Ransom: It is ready for your representatives when they come.

Mr. O'Brien: I think some of this record when you see it to-morrow—have they occupied a room——

The Master: The question is allowed, and a

4212 exception.

Q. Was there a room set aside by your direction or Mr. Stark's, that has been occupied and used by these accountants and statisticians of the defendants?

A. There was.

Q. Now, did you designate some one of the accounting staff to aid them in getting access to the vouchers and books and memorandum desired?

A. Yes, I assigned one of our staff for that pur- 4213
pose.

Q. Who was that?

A. Mr. Davidson.

Q. And he has since that time been engaged continuously in that work?

A. He has done nothing else since they came.

Mr. O'Brien: What is his initials, Mr. Brundage?

The Witness: H. C. Davidson.

Q. And his office was transferred for that purpose to the 17th floor?

A. It was. 4214

Q. And by your direction and under your general supervision do you know whether these accountants and statisticians have had access to vouchers, records, books and the like as desired?

A. We have given the——

Mr. O'Brien: I am going to ask here now, if this is rebuttal?

Mr. Ransom: No.

Mr. O'Brien: I can't conceive of any reason——

Mr. Hayward: (Interrupting.) This is untimely, your Honor.

Mr. Chambers: I hope your Honor will al- 4215
low a liberal cross-examination.

The Master: I hope you gentlemen will decide who is going to talk first.

Mr. Hayward: I would like to make an objection here.

The Master: All right, Colonel Hayward.

Mr. Hayward: I haven't made many objections this morning yet. It seems to me if it

4216 is proper at any time, this line of examination, it is improper now. It has no possible bearing on the merits of this case, and what difference does it make what——

Mr. Ransom: Well, your Honor——

Mr. Hayward: Judge Ransom, will you kindly do me the favor of not interrupting me? You have not let me make one objection without a rude interruption, and I do not like it.

The Master: I will see that you have a full chance to make your objection, Mr. Ransom.

4217 Mr. Hayward: Let me finish, and he can have an hour if he wants it. So far as I am concerned, it seems to me it is untimely. I don't see what it can prove in connection with this case. Are we to delay this case which they seem in such a hurry to finish while Judge Ransom tries to show out of the mouth of this witness, because some people have been to his office that his skirts are clean on diligence? Is that a question that has come into this case? It does not seem to me that it is at all. I want to object to this as not only irrelevant at this time, but certainly untimely. It will take the

4218 time of the Master——

The Master: Answering your objection——

Mr. Ransom: May I say a word?

The Master: No, it is not necessary.

Mr. O'Brien: I want to say, your Honor, right here——

The Master: One minute, and I will answer Colonel Hayward first by repeating what I said before. There have been so many state-

ments spread upon this record by counsel on 4219
the other side, not including yourself, as you have not, as I recall it, made any statement of that kind, but Mr. O'Brien has been quite free with them, charging the Gas Company with the failure to frankly disclose. Now, I do not think it is of great importance one way or the other, nor do I believe it is going to bear much upon the ultimate conclusion I reach as to the fact, by allowing these questions at this time, and I won't allow very many more of them, just to have something in the record from their point of view. Now, that is my only reason for allowing it. 4220 I agree with you that it is not especially important to you.

Mr. O'Brien: May I say something?

Mr. Ransom: May I say a word here?

The Master: Mr. O'Brien.

Mr. O'Brien: As your Honor has referred to the statements as to frank disclosure, I want to state that the statements I made regarding frank disclosures related specifically to several things, not to accounts. I did not mention that as yet. It related to the fact that they have not as yet turned over to us an inventory of their property as called for, nor have they 4221
turned over to us as per the joint request of the defendants' representatives, a list showing the cost of the property that they claim a return upon, or the estimated cost where the original cost is not available, and the basis of such estimates of the original cost. That has not yet been done. The furnishing of that letter to us would very much expedite the trial

4222 of this case. The third instance where I claim there has not been a frank disclosure is in the directions that they have given those who are in charge of the various plants and stations of the company where they are doing—where they will give no information and in fact are doing all they can to mislead and misguide and see what is in our visits to those plants.

Mr. Chambers: May I say a word, not a speech?

Mr. O'Brien: Now, the purpose of counsel's——

4223 The Master: Do you mean to insinuate that what Mr. O'Brien has just said is a speech and not a statement?

Mr. Chambers: Well, your Honor characterized something else——

Mr. O'Brien: Well, the record speaks for itself and I will stand on that statement. Now, if the purpose of counsel is in asking these questions as to the setting apart of a room for some accountants and having Mr. Davidson there to hand them records, if his purpose is to obviate the obligation of bringing into this court the underlying records of every expendi-
4224 ture of this company, than he has got to meet us on that point before we get very far.

The Master: Suppose we wait until we get to that point.

Mr. Ransom: May I say a word?

Mr. Chambers: Your Honor, I have been intending to speak of this little matter for several days, but have not had the opportunity.

The Master: Does it relate to this subject?

Mr. Chambers: Yes. In order to proceed 4225
expeditiously with the work upon the defense of this case we should have an inventory of the company's property, and Mr. Malthie tells me frankly that he will have to withdraw his men and that he cannot proceed further without this inventory, which it seems to me we are entitled to have at this time.

The Master: It is all a question, Mr. Chambers, of expedition, is it?

Mr. Chambers: Yes. Now, if he wants to complete this trial——

The Master: I just want a civil answer to 4226
the question. As I told you before, Judge Ransom representing the complainant is anxious to expedite this case——

Mr. Chambers: I know that is the watchword.

The Master: He wants to finish as quickly as possible. When the question comes before me properly that the defense requires time to look into any matter or thing presented by the complainant, I am going to try to do the fair thing. If as a result of doing what I think is right expedition is not attained, and the case is delayed, that is a burden that Judge Ran- 4227
som has got to assume. You need not worry about it.

Mr. Chambers: Your Honor will remember that our cry for an inventory is like a voice in the wilderness, and that we have asked for——

The Master: I don't know anything about a voice crying in the wilderness. I have never

4228 been in the wilderness and heard a voice crying.

Mr. Chambers: It is like a cry in the wilderness, he does not produce it.

The Master: I have repeatedly stated that you need not concern yourself about the speed with which this case is being tried, at the expense and rights and interests of the defendants.

Mr. Chambers: That is all. We will withdraw our men if we don't get the inventory.

The Master: I don't care what you do.

4229 Mr. Chambers: We will have to.

Mr. Ransom: These few questions which I asked Mr. Brundage in this respect were asked under well settled authority, to which your attention will be directed in due season. I haven't any more questions along that line at this time.

The Master: I am glad to hear it.

By Mr. Ransom:

Q. Now, Mr. Brundage, will you describe just what books of account and what subsidiary records were kept by the complainant during the year 1918, both at its principal office at 15th Street and Irving
4230 Place, and at its branch offices and manufacturing and distributing stations?

A. Judge, you have two questions before me now. May I answer the first one?

Q. Yes. Oh yes, I do not think you answered the last question before the discussion. It was whether under your direction they had access to the books and papers.

The Master: Have you been giving them access to your books and records there?

The Witness: We have, we have given them 4231
every book and record that they have asked for.

By Mr. O'Brien:

Q. What is that? Everything they have asked for?

A. Yes, sir.

Q. You emphasize that?

A. Not necessarily.

Mr. Chambers: We will wait until cross-examination.

Q. Why did you call counsel's attention to that question?

The Master: You need not answer that ques- 4232
tion. Mr. O'Brien can repeat the question when it comes time for cross-examination.

Now you have before you the question as to what books and records are kept in the main office, and at the different manufacturing and distributing branches and stations.

By Mr. Ransom:

Q. Can you describe them and state what they are?

A. The company keeps a general ledger; a general journal; an operating ledger; an operating journal; a voucher record; a cash book; a sundry 4233
creditors ledger; a sundry debtors ledger; sundry debtors blotters—in their general office accounting department.

All of the records in these books come to us from the various departments of the company. They are supported by pay rolls representing expenditures for labor, all of which are vouched for through our

4234 system, and approved in each individual instance by the superintendent of the department.

They come to us from petty expense vouchers which are likewise vised and approved by the superintendent of each department making the expenditure.

They come to us from sundry creditors vouchers each of which is required to be supported by a receipt voucher signed by the superintendent who receives the goods, checked by the purchasing department as to price, checked against the general office copy of the order upon which the goods were pur-

4235 chased, verified as to mathematical accuracy, and passed by the auditor.

We also get interdepartmental vouchers representing material transferred from department to department, and we also get reports monthly from every department recording the operations of that department, which lead to journal entries in our general books of account.

By Mr. O'Brien:

Q. Do you mean adjustments?

A. No, sir.

By Mr. Ransom:

Q. Aside from the so-called general books of ac-

4236 count that you have referred to, are there further subsidiary memorandums or books?

A. Yes, we keep several subsidiary records besides that.

By the Master:

Q. Do the different branches keep records themselves?

A. They do.

Q. What books do they keep?

A. That depends on what department you refer 4237
to. The commercial department, for instance, keeps consumers' ledgers, which are in turn supported by a great many records.

Q. What I would like to have you put on the record in answer to Judge Ransom's question is this: You have given us the general office system of accounting. I would like to have a statement of the books and records which are kept in each branch, and each subdivision, and in each manufacturing plant, and each subdivision of that. Take your time about it and let us get it complete.

A. Let us take the commercial department, if 4238
you will, which is the department that records the sales of gas, the big item of our revenue.

There are seven steps in the commercial department that flow in logical sequence.

First, the field index book; second, the consumers' ledgers; third, the consumers' bills; fourth, the consumption book; fifth, the proof ticket; sixth, the ticklers; seventh, the recapitulation sheet.

Now, taking them up in turn, the field index book is the book in which the indexer in the district records the index of the meter as of the date of his reading.

The previous index likewise appears in this index 4239
book. This index book goes to the bookkeeper, who records the current index, having before him already entered in his ledger the previous index. He makes the computation representing the difference between the previous index and the current index, thereby showing the amount of feet of gas consumed by the meter. He makes the extension at 80 cents per thousand feet, and thereby gets the amount of

4240 money to be charged to the consumer. He then makes out the bill against the consumer, it having been already prepared as to name, address and account number by the addressograph department. Having made out his bill, he then makes out a record that we call a consumption book.

This consumption book is so prepared as to have the numbers of the account corresponding with the number of the account in the ledger, down the lefthand side of this consumption book, and he enters opposite each account the number of feet of gas consumed as shown by the bill.

4241 I missed one step that I would like to go back and correct, if I might, your Honor. After a bill is made out a further step is taken by way of precaution, by having the bill checked back against the account by a bookkeeper other than the man who made out the bill.

The consumption book carries 35 accounts to a page and it is footed, each page, and that carried on to the end of the book, gives the amount of consumption in respect of the particular ledger that is being considered. These bills are then passed to the proof ticket and then passed to the clerk who runs these proof tickets.

4242 The proof tickets are made up in groups of 35, corresponding with the number of accounts in the consumption book, and the amount of money is entered upon the proof tickets. There is a further step, that on that same proof ticket the amount of feet as recorded in the consumption record, and the tickler clerk enters the amount of money applicable to those same accounts. Now, the tickler clerk takes these individual bills and lists them in a book

prepared for the purpose. We call it a tickler. The 4243
book is so ruled and numbered as to have 35 accounts down the page corresponding with the ledger, and he enters there the amount of the bill in money opposite each account and proves the total of his page, which he has transferred to the proof ticket, and we thereby determine accurately the amount of consumption as recorded in the consumption book at 80 cents per thousand will prove the amount of bills entered in the consumers' ledger.

Mr. O'Brien: I move to strike out the word "accurately".

The Master: No, I will let it stand. He said 4244
that is what they tried to do.

The Witness: We do it accurately. We get proofs on it.

The Master: We are up to the tickler. We will proceed from there.

The Witness: From the tickler the totals shown on each page of the tickler are then transferred to what we call the recapitulation sheet, which gives by ledgers the amount of consumption and the amount of money, and this recapitulation sheet, grouping all the ledgers together, makes our total sales for the 4245
month both in feet and in money, which is transmitted to the General Office and forms the basis of our entries in the general books of account.

Mr. O'Brien: May I ask the witness if he said "proving all our records"? Is that the word you used?

4246 The Witness: We verify the accuracy of the amount of the consumers' bills.

Mr. O'Brien: I move to strike out the word "proving".

The Master: Motion denied. Don't they collect money at the branch offices?

The Witness: They do.

The Master: Don't they have to keep a cash book?

The Witness: Certainly. I am describing to you the process, your Honor, by which we record the amount of the gas sales, which flow
4247 by this recapitulation sheet to the general office and form the basis of our entry in the books of accounts.

The Master: In addition to what you have told us, you keep a cash book and other books, do you not?

The Witness: We do not keep a cash book.

Now, payments are made at the commercial offices, branch offices, and for every payment received, which comes either over the counter or by mail or through the collectors, there must be a cash coupon. The money goes in the drawer, the coupon goes to the book-keepers,
4248 from which they post their ledgers as to money paid. The coupons also go to the tickler clerks, who likewise perform the same service, keeping in their record the fact that the bill has been paid. At the end of the month the book-keeper having known from his record the amount of the outstanding balance at the end of the preceding month, plus the sales which he has taken from the consumption, less the

cash which is posted from his ticket, leaves an 4249
outstanding balance yet due from consumers, and as an additional precaution that balance which he takes off at the end of each month is sent to the tickler clerk, who verifies from his records that the outstanding balance is correct both in total and in detail.

The Master: How about the manufacturing plants?

The Witness: That is the essence of the commercial department's record-keeping system. Will we go to the manufacturing plants, sir?

The Master: Yes, take the manufacturing 4250
plants.

The Witness: The big items in the gas manufacturing business are coal, oil and labor. We will take the coal.

A record is maintained in the manufacturing station as to the quantity on hand, we will say at the beginning of the month. All coal that is delivered during the month is weighed by the receiving station, entered in a log book, and a permanent record maintained at the station by the clerk of the station as to the receipt of coal. This record provides a means by which the superintendent is enabled to say that on 4251
a given date from a certain shipper he received a certain quantity of coal, and that receipt voucher comes to the accounting department and forms a part of the basis upon which the accounting department is justified in approving that bill for passing through the accounts.

4252 Mr. O'Brien: I object to these conclusions being read into the record.

The Master: I have taken those words, "justified in proving" as simply a method of explaining his accounts.

Mr. O'Brien: I think he ought to be cautioned to simply cut out these conclusions and state the purpose of a certain method of keeping the books.

The Master: My experience has been that there is no sense in cautioning witnesses, because they will fall into the habit of using
4253 those words anyhow, which are not especially important. They do not mean anything. He says they prove up and they justify; that to my mind simply carries the idea what they have been for. That is the way I describe that.

Mr. Ransom: That is the system.

The Witness: Pardon me if I use the laconic terms, your Honor.

The Master: That is all right. I can see, as I suppose we all can, that Judge Ransom is trying to lay the foundation for offering in evidence the books and records of the concern as indicating expenses, outlays and operating
4254 results. We might just as well have this all on the record, and we will have the question before us as to how far he can go.

Mr. O'Brien: I think this prepared speech being read into the record "that we proved this and justified that"——

The Master: It is not a prepared speech.

Mr. O'Brien: What?

The Master: It is not a prepared speech.

Mr. O'Brien: I do not know what it is; you

can call it what you want, but I am going to 4255
object to it.

The Master: Objection overruled.

Mr. O'Brien: The witness can state *modus operandi* of keeping the books.

The Master: That is what he is doing.

Mr. O'Brien: Without getting in questions of law.

The Master: Your motion to strike it out is denied and exception.

The Witness: From the coal pile coal is taken for use in the generators or retorts, as the case may be, and the coal is run across a scale and 4256
the weights taken. A record is kept of the coal so used, which goes to the station clerk, who records it in a record and such record maintained for a month gives him information as to the amount of coal which he has drawn from the coal pile during that month, and that report comes to the accounting department as to the coal used in actual manufacture and leads to the entry in the company's books of account crediting the coal pile and charging the production cost with the coal so used.

In respect of oil the essential procedure that I have described is maintained. Oil comes in 4257
and as it comes in the weight of the tank is taken and the measurement of the amount of oil in the tank in the beginning, the amount of oil taken into it, and as oil is withdrawn a record is maintained in the station and transferred to the books of account, crediting the oil stock and charging the production cost with oil so used.

4258 With respect to labor at the stations the records taken by the timekeeper or in a small station by a foreman, reciting the amount of time spent by each individual laborer or workman, and the work upon which he was engaged. This record goes to the station office, it is maintained as a record there and from it a report is prepared for each individual workman by weeks, showing the amount of time that he labored and the account to which the work is to be applied. These weekly cards for each individual workman are submitted to the superintendent of the station, who initials each
4259 individual card, and those cards come to the general office, payroll department, and from those cards the payroll is made up.

The Master: Now, take some other department—department of streets and mains.

The Witness: We have an account called the mains and services department.

The Master: How did they run their account?

Mr. Ransom: Has he mentioned anything about oil?

The Master: He has passed oil.

4260 The Witness: Coal, oil and labor, those are the three big accounts.

Coming to the street department, the big items of expenditure at those departments is in labor and castiron pipe. The matter of labor at the street department is kept in the case of a small job by the district foreman; in the case of a large job it would justify the employment of a timekeeper. He keeps

record of the men in his jurisdiction, and I 4261
might say, your Honor, that of course in the street department are small gangs working in a dozen or hundreds of places throughout the city, under the jurisdiction of a foreman, and each gang in turn under the jurisdiction of a district foreman. A record is kept of the amount of time for each laborer, each workman, verified by the timekeeper or district foreman, transmitted to the branch street department where it is recorded and from which these weekly individual time cards showing the name of the man, the amount of time labored and the work on which he is engaged. The 4262
card is signed by the superintendent in each case, each individual card, sir, and is then transmitted to the general office payroll department, from which the payroll is made up and the classification established.

Material for the street department, as I said, the large item is castiron pipes. Castiron pipe is usually bought under contract. The pipe is delivered at the yard and as it comes in is recorded by the yard foreman as to the quantity and size of pipe received and from whom. That record is kept in the branch street depart- 4263
ment and a receipt voucher indicating that on a certain date the company received from a certain shipper so many tons of a certain sized castiron pipe. The receipt voucher comes to the accounting department and forms one of the bases upon which to pass the shipper's bill for the pipe.

As the pipe is withdrawn from stock for the purpose of new mains or repairing old mains,

4264 the yard foreman gets a proper authorization from the superintendent to deliver at a certain point, or to a certain foreman a specified quantity of a certain pipe. The yard foreman keeps this record and at the end of the day turns it into the branch street department, showing that he has delivered the quantity of pipe he was ordered to. The street department keeps these records during the month and at the end of the month transmit to the general office a statement of the tonnage and size of each kind of pipe delivered, and the purpose for which it
4265 was employed, and that leads to an entry in our general books of account, crediting the stock account with pipe and specials and charging the proper accounts for the pipe so used.

By Mr. Ransom:

Q. You have described the system which has been followed in the general course of business during 1918?

A. Yes.

Q. And the books which were kept during that year?

A. Yes, sir.

4266 Q. And the routine which is followed in the making up of the reports by the branch office and department stations?

A. Yes, sir.

Q. Were similar books kept and memoranda kept and was a similar system followed in the regular course of business, thus far during the year 1919?

A. Yes.

Q. And in a general way, or were the same books,

d substantially the same system followed for at 4267
ast a considerable number of years prior to 1918?
A. Substantially ever since I have been with the
mpany, 16 years.
Q. Would you describe generally the system
hich is followed in the regular course of the com-
ny's business for the paying out of money; that
, the payment on the payrolls, the payment of the
ls and vouchers?
The Master: I thought we had covered that.
Mr. Ransom: I do not think that was fully
covered as to the payrolls.
The Witness: No, I did not fully cover it. 4268
The Master: Well, go ahead.
A. This general office payroll department makes
the payrolls for all of our employes who are
gaged upon an hourly basis. The payroll after
ing prepared, checked, verified both as to com-
tations and classifications, is transmitted to the
easurer's department and a check is drawn to
he order of the paymaster or paymasters—we
ave two—and it is drawn usually to the order of
and so, paymaster, or so and so, assistant pay-
aster.
The paymaster thereupon goes to the bank, gets 4269
he money for the amount of the payroll, puts it in
velopes and it goes to the department to be paid.
never pays any money to employes except upon
dentification, shown by a badge which each em-
loye is required to keep, and many times in ad-
ition by the personal identification of a man as-
igned for that purpose by the superintendent of
he department. The pay rolls for those employes
ho are on a weekly basis and which would in-

4270 clude the commercial offices, the branch offices, al
on weekly basis, is made up by each individua
branch, vized by the cashier, approved by th
superintendent, and comes to the general office an
the paymaster goes through the same routine in re
spect of paying, except that as that force is no
subjected to such changes the paymaster in mos
cases knows personally each employe and hand
him his envelope.

Mr. O'Brien: Your Honor, I would like t
call your attention here to the statement
being made—sweeping statements. I woul
4271 like to have the record indicate that it is onl
—it is not based on positive knowledge, and
think we ought to have something here to i
dicate what the witness says the paymast
never pays it out except by identification
the employe.

The Master: He is not supposed to.

Mr. Ransom: He is describing a course
business and routine.

The Master: Those are statements that
not do us any good to split hairs on.

Mr. O'Brien: I would not like to be getti
up every minute, but I want it understood t
4272 witness can describe the method without t
"right man" and all that.

The Master: I will never forget it. Y
have not told us how the employes other th
the hourly and weekly employes are pa
Are they paid by check?

The Witness: There are some of our e
ployes, your Honor, who are paid upon

monthly roll, for which a check is drawn by 4273
the treasurer's department.

The Master: To each employe?

The Witness: Yes, sir.

Q. Now, have you fully described the method so far as bills and vouchers are concerned?

A. I did not. The payment of sundry creditors' bills I will describe briefly. The sundry creditors' bill comes to the accounting department through the mail and goes through the regular routine which requires that it be supported by a receipt voucher, signed by a superintendent as to the receipt of the material. It must be further sup- 4274
ported by checking it against the carbon copy of the order upon which the goods have been purchased. It must be further certified as to the price which the purchasing department agreed to pay for the material and further certified as to its mathematical correctness, and further classified as to the work for which the material is to be employed. It is then approved by the auditor, transmitted to the treasurer's department, who in due course pay it by check.

By the Master:

Q. That has to do with sundry creditors? 4275

A. Yes, sir.

Q. How about the contract, special contract work?

A. In the case of contracts—I would have to ask you, your Honor, just what kind of contracts you have in mind.

Q. I have not any in mind.

A. Well, it is a difficult question to answer broadly.

4276 Q. And there is testimony here that cer
work was given out on contract. I do not k
just what the contract was, I was wonde
whether you paid on architect's certificates, or s
other form of voucher?

A. Well, two engineers having testified it
be assumed the contracts you refer to
in connection with construction work.

Q. Yes.

A. A contract was placed under the appr
of the company's executive committee, the
tract was recorded in the accounting departm
4277 the contract itself being filed in the secreta
office, and as the work progresses the field
spectors or engineers report to the enginee
construction as to the work accomplished, and
send those reports, showing his knowledge of
conditions, the superintendent of construction
issue a certificate that as of a certain date a cer
contractor is entitled to payment of a certain
centage of the amount of the contract; that
down to the accounting department, is pa
through the regular routine, checked for ma
matical accuracy, classified in accordance with
report of the engineer of construction, pa
4278 through our accounts and transmitted to the
gineer of construction and he pays it.

Q. Suppose there is a contract as to cast
pipe, what process would the expenditure on
go through?

The Master: I think he has answered
as to another part.

A. We were charged against the contract a

indication that so much of the contract had been 4279
completed.

Q. Where materials were procured and used on a particular contract they would be charged in that way?

A. They would be charged to our stock account in the case of cast iron pipe.

Q. Who other than the heads of departments pass upon, authorize or approve? What does the executive committee do?

A. In addition to the routine that I have described, it is necessary that all expenditures be approved by the executive committee of the company, 4280
who meet weekly and pass upon such expenditures.

Mr. O'Brien: Great or small?

The Witness: Great or small.

Mr. O'Brien: They have a dozen names on every bill, do they not?

The Witness: What is that?

Mr. O'Brien: I mean they have a dozen O. K's.

The Witness: Yes, sir. I would not say a dozen, but a great number, finally bearing the approval of the executive committee.

Q. Is there any other committee of the board of 4281
trustees than the executive committee that examine the accounts?

A. Yes, sir, we have a committee of accounts appointed from our board of trustees.

Q. It is made up of members of that board?

A. It is.

Q. Can you state just what is the part of the routine they fill?

A. Yes, sir.

4282 Q. Proceed.

A. The committee of accounts meet monthly and there is presented to them all the vouchers, the original vouchers that have been paid during the preceding month, and the committee of accounts confirm from an examination of the vouchers that every voucher has been approved by the executive committee, and they check the vouchers also paid against the company's cash book.

Q. Are these reports and memoranda which have been to the general office made up at the branch offices or stations or departments by employes there
4283 in the regular course of the duties, are those upon regular printed form?

A. They are.

Q. Supplied by the company through its central accounting department?

A. Yes, sir.

Q. So that a given kind of report is made upon a routine kind of form?

A. Yes, sir.

Q. And the method of handling those reports both as to the making up of them and their transmission to the central office and their entry in the
4284 books of the company, is a part of this general routine and course of business which you have described?

A. Regularly prescribed routine.

Q. Which has been followed substantially since your connection with the complainant company?

A. It has.

Q. Now, will you say that these reports received at the general offices from the branch offices, work stations, and so on, are many or few in number?

A. There are a great number of them. 4285

Q. At the risk of a slight repetition, will you give a list of those which are received?

The Master: I don't think we need that.

Mr. Ransom: I think we would like to bring it together.

The Witness: I can give you a list of them. They are more than I can testify to out of my head.

Mr. O'Brien: I think it might be serviceable, your Honor, to have this.

Mr. Ransom: I think it would be.

The Master: What is this list that you now refer to? 4286

The Witness: This is a list of reports received by the accounting department at the general office upon which entries are made in the company's books of account.

The Master: Do you want him to read off that list?

Mr. Ransom: I would like to have him read the list of these reports and memoranda which come to the central office. I think it would be helpful.

The Master: All right. Let us have it.

(The witness reads as follows:) 4287

"REPORTS FROM OTHER DEPARTMENTS"

Accounts Receivable—5—1 from each Branch.

Report of Lamp Material Used—5—1 from each Branch.

Cash Report—6—1 from each Branch and 1 from G. O.

4288 Report of Gas Sales—6—1 from each Branch and 1 from G. O.

Report of Sundry Consumers—6—1 from each branch and one from G. O.

Report of Deposits Transferred—5—1 from each Branch.

Report of Installment Appliances—5—1 from each Branch.

Report of Rented Appliances on District—5—1 from each Branch.

Report of Rented Lamps on District—5—1 from each Branch.

4289 Report of Condemned Meters—6—1 from each Branch and 1 from Repair Shop.

Meter Statistics—6—1 from each Branch and 1 from Repair Shop.

Branch Office Statistics—5—1 from each Branch.

Cartage Report—13—1 from each station, 1 from each shop, 1 from each Street Dept. and 1 from Transportation Dept.

Material and Supplies Report—9—1 from 21st and 99th St. Stations, 1 from each shop.

Report of Condemned Brass Goods—5—1 from each shop.

4290 Report of Manufacture—5—1 from each Station.

Report of Pipe and Specials—3—1 from each Street Dept.

Report of Services Condemned—3—1 from each Street Dept.

Report of Mains Abandoned—1 from General Supt. of Mains.

Report of Automobile Mileage—1 from Supt. of Transportation. 4291

Report of Scows—1 from Engineer of Distribution.

Report of Treatments at 111th St. Dispensary—1 from Supt. of Meter Dept."

The Master: The witness, as I understand it, has read a statement that reports come from the 111th street dispensary. Now, that is a place where you take care of injured employees, first aid station?

The Witness: Yes, sir.

The Master: And you get a report of whatever has happened there? 4292

The Witness: We do.

The Master: Do you know just where it is located at 111th Street?

The Witness: I do not.

By Mr. O'Brien:

Q. Is it east or west?

A. It is on the east side of the city.

"Report of Lamps on District—1 from Supt. of Lighting Division.

Draughting Report—1 from Chief Draughtsman.

Blue Print Report—1 from Chief Draughtsman. 4293

Gas Appliance Inventories—6—1 from each Branch & Repair Shop.

Lamp Inventories—5—1 from each Branch."

By Mr. O'Brien:

Q. What total is that?

A. The number of report?

Q. Is it about 500?

4294 A. I would have to compute it.

The Master: You can total that at your leisure.

By Mr. Ransom:

Q. And each of these reports which you have listed is in turn supported by vouchers and other memoranda in the particular department?

A. They are.

Q. Now, some of these reports are received daily and some weekly and over other periods of time?

A. No, every one of these reports are monthly reports.

4295 Q. Every one of these are monthly?

A. Yes, sir.

Q. Are daily reports of manufacture received?

A. Not by the accounting department.

Q. Not by the accounting department?

A. No, sir.

Q. Now, would you say that the number of vouchers of various kinds received in the accounting department of the company is many or few?

A. Sundry creditors' vouchers?

Q. All kinds.

A. There are thousands of vouchers received in the accounting department. I do know that during
4296 the year 1918 we received and passed through our accounts 18,300 sundry creditors' vouchers, and in addition to that, of course, there are the expense vouchers and the payrolls supported by these weekly individual cards I have described, running up well above 100,000.

Q. How many employees have their time handled through the payroll department?

A. Approximately 2,000, 2,200, 2,400, somewhere 4297
about that.

Q. How are these reports which are turned in from the employees in the various branch stations and offices and departments identified by the central office in the accounting department?

A. Why, they come in on regularly printed forms prescribed by the company, which have printed instructions and statements upon them, and every one of them is signed by a superintendent or some responsible authority.

Q. In that particular branch or department?

A. In the particular department, and serves as 4298
a basis on which entries are made in the general books of account.

Q. What is done with these reports and memoranda after their contents have been added in the general books of account in the accounting department?

A. We keep them on file.

Q. During your connection with the accounting department of the company, have you had occasion, from time to time, to test the accuracy of these reports and the other accounting data received from stations and branches?

Mr. O'Brien: I object to that, your Honor. 4299
It is a matter that the witness cannot characterize in a sweeping statement.

The Master: If he has had occasion to test it—he has not said whether he has.

Mr. O'Brien: Well, it is the next question I am objecting to.

The Master: I think I will allow him to say that he has checked up the system.

4200 The Witness: We have.

Mr. O'Brien: Your Honor, of course, he cannot characterize that.

The Master: I will let him say, if he says he has had occasion to test the system.

The Witness: I have, your Honor.

The Master: For the purpose of testing its accuracy.

By Mr. O'Brien:

Q. Will you go through a test for me between now and to-morrow; go to the 99th street station and take the report for July 3, 1919, of the corrected make as shown by the report, and compare
4301 it with the manufacturing book as of that date?

Mr. Ransom: Anybody can test that.

Mr. O'Brien: You test it and see what the result is, July 3rd of this year, Mr. Brundage.

The Master: That may come very properly on cross-examination.

Mr. O'Brien: What I object to, your Honor, is this. I think it is ridiculous to ask the witness a sweeping question about making a test. Here are 100,000 vouchers, and are you going to ask him whether he has made a test from time to time?

4302 The Master: I will let him state whether he has tested the accuracy of the system.

The Witness: Why, your Honor, the company makes periodic tests of the accuracy of every record that comes to the accounting department.

Mr. O'Brien: You have an auditor, a board of auditors, Mr. Brundage; that is what you mean, isn't it?

The Witness: I mean that we make a test 4303
as to the accuracy of everything that comes to us, and we do it periodically.

By the Master:

Q. Of, course, in making that test you take isolated items here and there?

A. Suppose you inquire as to some particular item, so I can answer it intelligently.

The Master: What I have in mind, for instance, you take the importation of merchandise into this country, there would be twenty barrels of merchandise, but the customs inspectors do not open twenty barrels, they open one 4304
and analyze it to get the value. Now if you were testing a system, you would not test every item covering a long period of time?

The Witness: You are discussing then the receipt of material?

The Master: No, I was simply illustrating. Judge Ransom asked you whether you tested the system from time to time.

The Witness: We do.

By the Master:

Q. In testing the system how do you do it?

A. I am trying to get down to some particular 4305
case so I can explain it intelligently.

Q. How do you test the accuracy of reports of material on hand?

A. By taking an inventory periodically. The Public Service Commission uniform system of accounting requires us to do it, but we did it for years before the system was established.

Mr. O'Brien: Yes, that uniform system of accounts of the U. S. A., they brought it in

4306 every minute in the Kings County case as a life preserver, when they found themselves sinking, every day, every folio of the record has the uniform system of accounts.

Q. What you have in mind, Mr. Brundage, is that at the end of the month you get a report that they have 1,000 feet of a certain size of pipe on hand, you test that once in a while by making an inventory to see that the stock is there?

A. Yes, sir, to see that the stock is there, your Honor.

Recess.

4307

AFTER RECESS.

By Mr. Ransom:

Q. Mr. Brundage, we were speaking just before recess about the tests which were made to determine and demonstrate the accuracy of the reports and other accounting data received from stations, branches and the like. Is the making of such tests and are the routine of such tests a part of the accounting system and routine of the company?

A. It is.

Q. Now, will you further illustrate some of those
4308 methods of tests which are made in the regular course of business by you or under your direction?

Mr. O'Brien: Do you mean the testing of oil to see whether it conforms to the contracts or the testing of the coal to see whether it is up to the standard or not?

Mr. Ransom: No, he is speaking now about testing accounting data.

Mr. O'Brien: I make the same objection, 4309
your Honor.

The Master: Overruled.

Q. Take the check on collectors, how is that, just scribe that.

The Master: He is just describing the system of operation, that is all.

Mr. O'Brien: Well, he is trying to lay the foundation for some presumptions, but they can't——

The Master: Well, I am frank to say that the proof being complete enough, and Judge Ransom having successfully carried the bur- 4310
den to that extent, he does lay the foundation for the presumption that the records of the company are correctly kept.

Mr. O'Brien: Well, we will have to controvert that, your Honor. I am going to object to it.

Mr. Ransom: I am basing my question, every question I ask, on the decisions of the Court.

Mr. O'Brien: Well, you can flash your decisions.

The Master: Well, let him put in his proof, and if there is any dispute about it, we will 4311
talk about it then.

The Witness: In answer to that question, the check upon collectors is obtained by periodic shift of the collectors from one group to another. These changes happen with quite some frequency, being made by direction of the superintendent of the commercial department. We also get a further check upon the collectors

4312 by sending statements of account at odd intervals directly to the consumer, showing balances due, and if such bills have been paid by the consumer, he is at once brought or comes to the office and shows his receipted bill.

Mr. O'Brien: Just state that again, Mr. Brundage.

The Witness: The whole story?

Mr. O'Brien: Well, may be I can bring out what I want with a question. Is this a tryout with a decoy man, your man?

The Master: No, not at all, Mr. O'Brien. What he does is he shifts his collectors, and

4313 the new collector reports that a customer insists that they paid a bill, and that immediately calls attention to the fact that there is some discrepancy or dispute. Am I right about that?

The Witness: A true check, your Honor.

Q. Now, how about the check on the indices?

A. The check as to the accuracy of the indices is likewise obtained by the shifting of the indices, it being very seldom that the same indexer takes the same district twice. The index books, if I did not say so this morning, bear a record as to who took the index.

4314 Q. Now, how about the tests which are made in the regular course of business as to the gas, oil and coal used? How are those made?

A. The accuracy of the gas oil for example, I have described this morning the accounting routine by which oil is received and used and accounted for. The results of the use of oil produced a computation showing the gallonage used per thousand feet

of gas made, and the gas engineers know approxi- 4315
mately the——

Mr. Chambers: Now, if your Honor please, he is going into the——

Mr. O'Brien: (Interrupting.) Your Honor, I am going to urge you to terminate this line of testimony now.

The Master: Let me hear that question.

Mr. O'Brien: This witness is not qualified as a gas engineer, he is going to give us some statement that—he has half emitted some dictum here about some methods of gas manufacture. Now, I think it is clearly inadmis- 4316
sible to attempt to have the witness explain what he calls tests here.

Mr. Ransom: Tests of accounting.

Mr. O'Brien: That is not a test of accounting, it is a test of the gas plant, the manufacturing plant.

The Master: Let me get the question and his answer so far as it has gone.

Mr. O'Brien: He is not qualified, your Honor. If he is going to be put in here as an expert, then we want to have a chance to examine him as an expert accountant.

Mr. Chambers: When interrupted he was 4317
saying that gas engineers know——

The Master: (Interrupting) Let me just get the question and the answer so far as it went.

(The question and answer were read by the reporter.)

Mr. O'Brien: Now, your Honor, you see we

4318 are passing over from the domain of a
countancy into the gas engineering.

Mr. Ransom: I think he may state t
method, of course.

The Master: The objection is made to th
statement as to what gas engineers know.

Mr. Ransom: I would be willing to have th
stricken out.

The Master: I will strike out the last pa
of that statement, that gas engineers know.

Mr. O'Brien: Will your Honor also stri
out beginning with the words "the accura
4319 we have described this morning". I do
think this witness ought to be allowed to col
this record by jerking in accuracy and oth
such terms describing the way they keep the
books. We will find out how accurate th
are.

Mr. Ransom: Mr. O'Brien wants to do a
the coloring of the record himself.

The Master: I won't disturb that expressi
by the witness. Proceed.

Mr. O'Brien: We have got the books he
let him take the books and show the *mod*
operandi. We don't need his language d
4320 scribing that. He has got the books here.

The Master: I will pass on that when w
come to it. You have not finished.

The Witness: If I have not, I will do so n
if I may.

The Master: You stated that you have a
ready stated the system of keeping the reco
of the oil and fuel supplies that go in and
out. Now, you are talking about a test?

The Witness: I am. 4321

The Master: Go ahead.

The Witness: From these records in the department we make a computation showing the gallonage of oil used per thousand cubic feet, and that record passes through the jurisdiction and under the scrutiny of the engineer of manufacturing as well as the accounting people, and if——

Mr. O'Brien: It does not take an expert to compute the thousand feet, does it, per gallon of gas?

The Master: Now, Mr. O'Brien, let the wit- 4322
ness finish his answer. I rather expect he will proceed to state that if the experts having to deal with the quantities used or which should have been used, find a variance which in their judgment requires explanation, they make a report to that effect. Is that the idea, Mr. Brundage?

The Witness: Your statement is exactly correct, your Honor, except as to the last feature.

The Master: Yes.

The Witness: They would make no report, but the engineer of manufacture would want to know instanter what was the reason for an 4323
increase in the gallonage per thousand cubic feet of gas made.

The Master: In other words then, if as the result of the analysis of these various reports it appears that more oil has been used than experts believe should have been used, the matter is a subject of investigation by somebody?

4324 The Witness: At once. And in answer to your further question, Judge——

Mr. O'Brien (Interrupting): I object to the voluntary statement of the witness.

The Witness: It is not a voluntary statement. He is asking two questions.

The Master: If it is not responsive to the question, I will strike it out.

Mr. Ransom: He is coming back to my question, and not to the master's question.

Mr. O'Brien: He is pointing to you, telling you when to start.

4325 The Master: Well, let Mr. Brundage get that off his chest and if it is not responsive I will strike it out.

The Witness: Counsel asked me as to two materials, oil and coal, and I was about to say that the coal is tested by the same method, a determination made as to the pounds of coal per thousand cubic feet of gas; which likewise passes the scrutiny of the manufacturer, and will receive similar treatment if they were shown to be erroneous or believed by him to be higher than it should have been, or lower.

Mr. O'Brien: You are assuming the infalli-
4326 bility of all the underlying records, aren't you?

Mr. Ransom: I object to cross-examination, your Honor.

The Master: I will let Mr. O'Brien ask the question, since it is asked, if he don't ask any more. He can answer that one question. In arriving at that conclusion, the experts assume the correctness, or, as Mr. O'Brien puts it, the

infallibility of the records on which those re- 4327
sults are based.

The Witness: I believe those records to be correct.

Mr. O'Brien: I did not ask you that.

The Master: Well, that is the assumption by which you do reach the conclusion as to whether too great or too small a percentage of oil and coal has been used in consumption. They assume the accuracy of the records as to the amount used?

The Witness: We verify the accuracy of the amount used by the method I have just 4328
described, your Honor.

Mr. O'Brien: That does not answer the question. Let me illustrate, Mr. Brundage.

The Master: Save this for your cross-examination now.

Mr. O'Brien: Let me ask one question.

The Master: Just one.

Mr. O'Brien: You assume, for instance, to illustrate what I meant in my question, which you evaded, you assume that that octogenerian who weighs the coal in the 99th street plant, is accurate in the statement he puts down in pencil on that paper as to the weight of the 4329
coal in the dump cars?

The Master: You need not answer that question, and I will rule it out for two reasons, Mr. O'Brien; one that you have been characterizing this witness' testimony in a manner that I do not think is necessary, namely, as an evasion; and two, that you——

Mr. O'Brien: But, your Honor, you can plainly see that he did not answer the question.

4330 The Master (Continuing): And two, that you have been talking about octogenerians in a plant that I do not know anything about. I will not allow the question. Next question.

Mr. O'Brien: Exception.

Q. In these tests with respect to coal used, you have available the data as to coal bought and paid for?

A. We have.

Q. And as to the coal received and weighed?

A. We have.

The Master: Of course, if somebody had the
4331 making of reports, and a lot of coal has been carted out and used by somebody else, the whole basis of the estimate falls?

The Witness: It is physically impossible for that to happen, your Honor.

The Master: No, but that is the fact, isn't it? That would result?

The Witness: The periodic testing of your coal pile which is done by measuring the pile, would demonstrate that there had been a loss.

The Master: But assuming now this coal has been surreptitiously used and not accounted for, and it has not been discovered on
4332 the check-up system that you have?

The Witness: Yes, sir.

The Master: Then the basis upon which the experts reach a conclusion as to the amount of oil and coal that is used, would be wrong?

The Witness: Yes.

The Master: That is what Mr. O'Brien was trying to get at. So that when they reach a

conclusion as to the quantity of oil or coal 4333
used, whether it is in excess of or less than the average which should have been used, they are assuming the accuracy of other records?

The Witness: Yes.

Mr. Hayward: But that could not happen, because everybody connected with the company is infallible, from the lawyers down or up.

The Master: We have the statement on the record what Mr. O'Brien had in mind. If there had perhaps been an unusually large quantity of coal——

4334

Mr. O'Brien (interrupting): I think it is axiomatic. If they found a glaring discrepancy they will look it up and ask for an inquiry. They need to tell us that.

The Master: Let's get along to the next line.

Mr. O'Brien: Like Shakespeare's man, they protest too much.

Q. When Mr. O'Brien started his latest interruption, you were saying something about the inventory or check-up of coal. Did you finish your answer in that respect?

A. If it was not perfectly clear on the record, I would like to say in addition to the checks that I 4335
have described, the engineer of maintenance makes a point to periodically measure all of the coal pile to determine that the coal carried in stock as shown on the books is actually in stock as shown by this measurement.

The Master: Does that come in the form of a report to the accounting department?

The Witness: It does not.

4336 The Master: Do you see him do that?

The Witness: I do not.

The Master: Well then, I will strike out the answer.

Q. Now, with respect to the vouchers, are they, after they are filed, are they listed by numbers or alphabetically?

A. The sundry creditors' vouchers?

Q. Yes.

A. They are filed numerically.

Q. How long has that been true?

A. Approximately four years.

4337 Q. And back of that how were they listed or filed together?

A. Filed alphabetically.

Q. Now, is the number of that voucher, invoices, and so forth, large or small?

A. I am able to say that, and it appeared in the morning's testimony that during 1918 we passed some 18,300 sundry creditors' vouchers through our accounts.

Q. Including these time cards, there were over 100,000?

A. There were over 100,000 time cards, and there are the expense vouchers as well, and the thousands

4338 of vouchers representing inter-departmental transfers of material.

Mr. O'Brien: May I ask why you lay such stress on the 100,000?

The Master: No, you may not, Mr. O'Brien.

Q. In connection with the 18,300 of sundry creditors' invoices received and posted during 1918, can you say how many book entries were necessary in connection with them?

Mr. O'Brien: Your Honor, I am going to 4339
object. We have the books here and they speak for themselves. I think the line of questioning is ridiculous.

The Master: Yes, but do not forget, Mr. O'Brien, that Judge Ransom is trying to lay a foundation for the introduction of these books. If you have no objection to the entries of those books——

Mr. O'Brien: I certainly have, and if he thinks by laying stress on the fact that there were 100,000 vouchers he is going to have them brought here he is making a mistake. They 4340
will be here, either in the course of the direct examination or——

The Master: I am still wondering if the stenographer can take two statements at one time.

The Witness: It required over 30,000 postings to make the necessary entries in our operating ledgers, required from these 18,000 sundry creditors' vouchers.

Mr. O'Brien: Then I move to strike out the answer as a conclusion of law.

The Master: Motion denied.

Mr. O'Brien: He said it required that. That 4341
is a conclusion of the witness, your Honor.

The Master: That is a conclusion of fact. I will allow you an exception.

Q. This figure which you have given relates to the operating ledger?

A. It does.

Q. And does not include entries in any other book?

4342 A. It does not.

Q. Did what you have just described include pay roll charges?

A. No, sir; they were entirely separate from this 30,000 item.

Q. What other classes of vouchers were handled by the accounting department of the general office in 1918 and these other years?

A. In addition to the 18,000 sundry creditors' vouchers——

Mr. O'Brien: Just a minute, Mr. Brundage. I make my objection, your Honor, that this is immaterial.

4343

The Master: Objection overruled, and exception.

Mr. O'Brien: I cannot see how it is admissible, or what difference it makes how many entries were required to be made.

The Master: I am allowing it because I anticipate that Judge Ransom is going to take this position. This is a big organization, a big company, and many records, many vouchers are necessary, a regular course of business, handling thousands and thousands of entries, and many thousands of papers; that the books

4344

are correctly kept and they do not have to bring any witnesses to prove every single purchase or every single item of expense. They can prove them by offering in evidence these books of account. In order to do that I have got to give him the widest latitude, to lay his foundation. When he offers his books of account in evidence, as I anticipate he will, I am going to permit counsel to cross-examine this

witness to destroy, if you can, the foundation 4345
that Judge Ransom is trying so carefully to build up. When all that is out of the way, I will then hear a discussion and rule upon the admissibility of these books, but I have got to let Judge Ransom have the widest latitude to put in all the proof he thinks necessary to lay the foundation.

Mr. O'Brien: I will tell you where the error is, your Honor, if you will bear with me for a minute. Here is where one of the errors is that underlies the position of counsel for the complainant. In the first place, he is assum- 4346
ing that this witness is an expert accountant. He is assuming that every record that is kept is accurate; he is assuming that he has established the necessity of having this systematized, of two or three hundred odd reports pouring in from the branch office to the main office, that he has established the necessity of having a corps of employees in 15th Street, which is a duplication of the work done at the branch offices. It carries a lot of false assumptions and presumptions with it, and whether or not those books can be admitted in evidence without the underlying data cannot be any 4347
more firmly established pro or con by showing that there is a hundred or two hundred, or two hundred thousand entries necessary to be made. Nor can the statement made by the witness that it is necessary to make two hundred thousand entries in certain books of account, his statement, establish that fact.

The Master: No.

4348 Mr. O'Brien: That is a conclusion that may be drawn; he cannot draw the conclusion for the Court. The fact that it is a big company, a colossal company, an octopus, does not make it any different from any other company. It does not change the rule of law.

The Master: I do not understand that an octopus depends on size.

Mr. O'Brien: Well, I am thinking of the tentacles, your Honor.

Mr. Hayward: An octopus has eight tentacles, reaching all the way from Irving Place to 15th Street.

4349 The Master: It is not a question of size, is it?

Mr. Hayward: No.

Mr. O'Brien: Your Honor, to reiterate what I said, they are not to be relieved because they are a company claiming millions of dollars of property and having millions of supporters in the shape of consumers. That does not change the question of law. That book, its accuracy, cannot be established because it may be a little bit inconvenient for them to bring in the underlying data.

The Master: Mr. O'Brien, are you not now 4350 arguing against the admissibility of those books?

Mr. O'Brien: No, it is the line of questioning, your Honor. It is a line of questioning that is clearly inadmissible.

The Master: But if as a result of all these questions and this effort by Judge Ransom to build up a foundation, he fails in that, accord-

ing to your rule of law I agree with that, all of 4351
this testimony goes for naught, doesn't it?

Mr. O'Brien: It does, but—your Honor, let me lay stress upon this, that in the line of questioning he is putting now, he is assuming that he has established the witness as an expert in that particular line.

The Master: I shall so rule, if that is necessary.

Mr. O'Brien: If that is so we ought to have a right to cross-examine him as to his qualifications, and to his knowledge of the branch offices, as to his knowledge of the dependability 4352
or the reliability or the training or expertness of the men who are running and making these original records. If he is offered as an expert I protest that we should have a right now—not after all this stuff has gone on the record, but now, to find out how much Mr. Brundage knows about these branch offices and the individuals whose accounts are assumed to be infallible in the statements he has just made as to the accuracy of those tests. I ask that privilege to examine preliminarily.

The Master: Did you want to say something, 4353
Mr. Hayward?

Mr. Hayward: I wanted to say this, your Honor: If we assume, as I think we must, that mere numbers and mere size of transactions obviously cannot change the fundamental rules of evidence, then what difference does it make, even in this preliminary inquiry, whether there were 100 time cards or 20 time cards. If there were 20 time cards and your Honor

held that we were entitled to see them, that that was the best evidence, would not that rule follow just the same if there were 100,000? It would be a tedious job, but aren't we wasting time by going on with this long rigmarole about what a vast business this was. That cannot have any other purpose, as I see, than to lay a foundation by short cuts and resorting to something not the best evidence.

Mr. Ransom: May I say a word?

The Master: Yes.

Mr. Ransom: I am laying here a foundation, a foundation that is based explicitly on the decisions of the Federal courts and various of the State courts with respect to the procedure to be followed in rate cases involving large public utilities of this kind. There has not been a question I have asked so far which has not been based specifically on the decisions of courts, and when I have completed asking those questions, then the question which counsel is undertaking to argue at this stage will be presented, and upon that I shall desire to be heard orally, as no doubt they will, and submit authorities, as no doubt they will.

The Master: I will save you gentlemen all this time——

Mr. O'Brien: Let me give you an illustration to show how right I am on this matter, and I won't go into the law.

The Master: You may save a good deal of argument if I make a statement. I have had occasion in a number of cases that I have had to try, to deal with the rule that apparently

Judge Ransom is about to invoke. I had it not 4357
in such a tremendously big case, but a case involving timesheets and labor involved in a printing bill, where the charge was for printing a large number of books or circulars, and the amount claimed depended entirely upon the amount of time and labor spent in setting up and in printing.

Mr. Hayward: A *quantum meruit* case?

The Master: Not necessarily *quantum meruit*. The charge was a fixed charge based upon the number of hours used. In other words, this particular bill that I have in mind 4358
was so much an hour for setting up, so much an hour for running through the machine; so that it was necessary for them to prove—they did not charge, as I understand it, and I am correcting myself, the exact amount they paid their labor, that was not in evidence. The contract was setting up they were to get 60, 70 or 80 cents an hour and for printing so much an hour. So that it became necessary for me to prove the amount of time spent and after studying the case and analyzing it I reached the conclusion that I would not have to bring
every man who set up type and ran this stuff 4359
through the machine. If I were able to show a complete system of records carrying out the time spent and excluding by all human fair business possibility that the employer was paying for time that he did not get—that that old rule about bringing the witness who did the work did not apply any more, and I prevailed

4360 in that contention. I have in mind several other cases of a similar kind.

Mr. O'Brien: Will your Honor bear with me right here?

The Master: I am going to hold that in this case, Mr. O'Brien, unless you show me some concrete case.

Mr. O'Brien: Do you mean to say you have your mind made up on the matter?

The Master: I mean to say unless you show me some concrete case upon the matter I am inclined to agree that the rule is that the proper foundation having been laid, not so much as
4361 to the size of the thing but as to the difficulty of collecting together witnesses and proof, making it a task that would run for years, that it is the duty of the court to take evidence which in all human probability proves the fact.

Mr. O'Brien: Let me make one or two observations here.

The Master: Well, Col. Hayward?

Mr. Ransom: Do you want to argue this question now?

The Master: No, I am just giving you my ideas.

4362 Mr. Hayward: On the theory that practically that would be the best evidence?

The Master: Yes. We will take it up more in detail when I get this foundation in. But I am explaining now why I am giving Judge Ransom the latitude I am in putting in the proof which he believes lays the foundation.

Mr. Hayward: But amounts or numbers of them does not prove it.

The Master: No, except that it accentuates 4363
the situation, and if Judge Ransom believes that cases bear out his claim or that he is offering this evidence in line with decisions that point out that is an element, and I have not had occasion to run across before, I am going to let him do it.

Mr. O'Brien: Your Honor, let me say this to you right here now. Let me say two or three things to you. I am going to give you one statement of law and another one as to facts. I am not going into the main question except to observe this—that the difference be- 4364
tween your printing case and this rate case is that the rule has been laid down in every rate case passed upon by the U. S. Supreme Court in the most positive emphatic language, that they have got to prove their case beyond a rational doubt, beyond a reasonable doubt, and they used terminology and they laid down a rule that is just as rigid in its effect as the rule that obtains in criminal cases. Beyond a rational doubt.

Now, they cannot come in here and say, Here is a *modus operandi* of keeping our 4365
books; here is a record, for instance, of the way the coal that is consumed passed from the scales into the generator house and into the clerk in the work's office, and to the superintendent's hands with his signature and to other processes down to 15th Street, and finally give us the tenth book, in which an entry is made, and which by keeping a certain system they say proves it, proving it by what

4366 they say are acid tests from time to time, and presuming that those records are correct. There is no such presumption or rule of law in rate cases.

Passing from the legal side of it, which I do not want to go into just now, to the facts, here is what we have got. We have, for instance, in the works coal used and labor employed and oil used. As to the oil used, they use a couple of different methods, the yardstick method measuring the oil in the tank after it is consumed and the meter record that
4367 is operated in the generating house. The man who is there in his shirt sleeves or with his shirt off in the heat of that toilsome room making notations on paper from time to time to indicate what he thinks is on the meter of the oil consumed. He turns in his daily report in pencil writing, made hurriedly, as I say with all the dust and that atmosphere, into the clerk in the work's office. That clerk —they come, never go—some reliable, I take it, and some not reliable, susceptible to the imperfections of human nature, he makes that notation, he makes his record, they transcribe
4368 that into a manufacturing book, and then periodically the superintendent of that particular station will mail his reports in, down to 15th Street, and it goes through the different channels that have been described by the witness.

Now I take it that the books they have brought into court and the books to which the witness referred represent perhaps the eighth,

ninth, tenth or the twelfth entry of some rec- 4369
ord as to the way in which money has been spent. I say, your Honor, that the witness' testimony as to what he thinks in his opinion is the accuracy of test that they use from time to time cannot establish those as admissible in this case, and therefore these questions are not admissible and not proper.

Now, here is the point I want to emphasize, and that is this: So far as the expense of operating is concerned—I am speaking now about the works, not the field department, the accounting department, the street department 4370
—but so far as the expenses of the works are concerned there are other records and other books of original entry that can be produced here, that can be explained here, and there we have the original sources as to what the facts are. Now, as to their accuracy, that is going to be tested out, and it is going to be tested out right here in Court, and I will say for purposes of illustration, and not to lead to any conclusion that might perhaps be improper as to the inaccuray of all their records, that on merely a cursory examination of the records at 99th street the other day, I took the report 4371
for July 3rd of the gas made and the material used, and I turned to the page in the manufacturing book, which is the permanent record, and I found a difference of 9,000 in the corrected make of gas for that particular station. Now, I asked for an explanation, and there was no explanation forthcoming.

I might refer to my recent experience before

4372 Mr. Justice Greenbaum, and I say that he may rely upon his knowledge of the law, so far as this method of proof is concerned. The plaintiff there was required to bring in the books of original entry, the original documents. We got down to the gasmaker's report to get the underlying records for this big manufacturing book which contains the essence of information on the gas making plan from which this is made, and the man who kept the record was brought into Court, and he brought certain months and years in, and he was quizzed as to the method. We went through an examination 4373 of him, an examination of the records, and the result of that cross-examination was that the whole book was excluded, the whole manufacturing book went out.

Now, I say that the requirements of proof of that kind cannot be done away with and excused here by merely having a witness come in here and state that they made tests from time to time to determine the infallibility of their system, and that, therefore, these books are just as infallible as any book that was ever written. It is in that belief that I think the whole line 4374 of questioning is wrong. There is another method to present this case, and the Ransom method is not the correct one, and it is vulnerable, your Honor, to ask a man how a system works, and let him say that it is accurate and the accounts are proper and justified, and so on, and from that attempts to establish presumption that the books must be accurate until they are attacked and shown to be inaccurate

I say that is entirely wrong in a rate case, and 4375
does not seem to measure up proof required as expressed in the rule of the Supreme Court of the United States, that it must be proved beyond a rational doubt.

The Master: I am going to adhere to my decision to take this preliminary proof.

Mr. Ransom: Does your Honor wish to hear me further?

The Master: No, not at this time.

Mr. Ransom: Every question I have asked has been based on decisions of the courts in rate cases. 4376

By Mr. Ransom:

Q. I asked you what other classes of vouchers were handled by the accounting department of the general office in 1918?

A. And I started to say that in addition to the eighteen thousand odd sundry creditors' vouchers, there were all of the pay rolls and the expense vouchers, and this voluminous list of reports that I read this morning, all passing through the accounting department records each month.

Q. Can you give me any idea as to the number of bookkeepers who made entries in the books of account at the general office during the year 1918? 4377

Mr. O'Brien: Your Honor, I make the same objections on the grounds I have already expressed, and on the further ground that it has not been established here that a given number of book-keepers were necesarily employed in the accounting efficiently and economically of the complainant's office.

The Master: I will take it on the theory already stated and allow you an exception.

4378 A. The accounting department of the company had during the year 1918, approximately 25 different men.

Q. Who worked on the books?

A. Yes, sir.

By Mr. Hayward:

Q. How much of a turn-over was there?

A. I should not like to give it to you in percentage, but there would be a considerable turn-over, due to changes occasioned by the war. Men withdrew to go to war; some did not come back, and men withdrew to go into lines of employment that
4379 provided additional revenue, and we had a considerable change in our personnel.

The Master: You don't mean it took 25 men to do that work?

The Witness: No.

Mr. O'Brien: That emphasizes what I have said, about the attempt to establish anything by presumption. Here we have a nomadic class of employees, they come and go. These are in the office, not to say anything about the works. We have new men here and old men; we have some men who are decrepit. You have to establish the reliability of those records.

4380 The Master: I am going to pass on that when all the proof is in.

By Mr. Ransom:

Q. When you say at least 25, you mean there were that many employed at a given time, or do you mean that is the total of the employees who did actual work on the books during the year?

A. The total. The accounting department ordinarily runs fifteen or sixteen men, but due to these

changes occasioned by the war, we had to put on a 4381
number of men to replace those drawn away from us.

Q. Of these 25 what can you say as to their present whereabouts; how many are now in the employ of the Company, and how many do you know about elsewhere?

Mr. O'Brien: I renew my objection.

The Master: That is all taken under that same ruling.

A. We had many men who went to the war, that never came back to us.

Q. Do you know where they are now? 4382

A. I do not.

Q. How many of those were there?

A. I should wish to consult my records before I answer accurately, but probably five or six, seven perchance.

By Mr. O'Brien:

Q. Did you take them all back when they wanted to come back?

A. Every man that wanted to come back came back to the company.

Mr. Chambers: We don't expect you to call those that were killed.

By the Master: 4383

Q. And were there others?

A. Others left us for employment that presumably provided further revenue.

Q. Do you know where they are?

A. I do not.

Q. How many of those were there?

A. Oh, probably half a dozen or more.

4384 Q. How many men have you got there now, who have been with you throughout the year, 1918?

Mr. Ransom: Who worked on the books?

A. I should say half a dozen.

Q. Not over half a dozen?

Mr. Hayward: Do you ordinarily have 25 that work on them altogether?

Mr. O'Brien: When you are speaking about the books now, you are not referring to the books in the work's offices?

A. No.

Q. You are not referring to the books in the
4385 branch offices?

A. No.

Q. You are not referring to those?

A. No.

Q. You are referring to this supernumerary staff in the main office?

Q. It is not a supernumerary staff. It is the accounting force of the company I am referring to.

By Mr. Ransom:

Q. To your knowledge are any of the men who worked for you on the books during the year 1918, out of the State?

A. Yes, I know several. One man is in Ala-
4386 bama.

Mr. Chambers: A subpœna here is good all over the United States, isn't it?

The Master: I doubt it. It runs 100 miles.

Mr. Chambers: It is not confined to the boundaries of the State, however.

The Master: That is a question that has been mooted many times. I have always taken the position that it runs 100 miles out of the State.

Some judges have held that it is 100 miles from 4387
the district.

Mr. Chambers: There is another way, by commission.

The Master: Yes.

Q. Mr. Brundage, in your judgment, does the accounting system on which your books are made up, accurately and reliably reflect the business transactions by the company?

Mr. Chambers: I object to that as incompetent.

The Master: I shall sustain that objection. That is a conclusion I shall have to draw from 4388
the evidence.

Mr. Ransom: Exception.

Q. Is it, or is it not important for the business of the company that these reports be accurate and reliable?

Mr. O'Brien: I make the same objection.

The Master: I sustain that objection. It is a conclusion that I can draw from the facts, and the witness cannot.

Mr. Ransom: Exception.

The Master: I take it that what you have in mind there is a statement by some court in the light of the evidence that was in, to the 4389
effect that it is important for a corporation to have these things right, but that is a conclusion that the Court draws from the evidence.

Mr. Hayward: But he is trying to substitute throughout this whole thing an accounting department provided by the Company for its own safe-guarding, in lieu of his book-keeping department, and it cannot be done. The authori-

4390 ties say they shall show the books of account. It is not the book-keeping department that is here. In that respect what Mr. O'Brien has said is true, so far as book-keeping is concerned, this is a supernumerary department.

Mr. Ransom: It is not.

Mr. Hayward: It is.

Mr. O'Brien: We will prove it before we get through, and the building too, is unnecessary, in which it is kept, a nineteen-story building.

Q. Can you say as an officer of this company whether the books of account are accepted and
4391 relied upon by officers of the company as true and accurate statements of the business?

Mr. O'Brien: If your Honor please——

The Master: I sustain the objection. I know your grounds.

Mr. O'Brien: But it carries with it the innuendo not only that counsel here are non com. but that Mr. Carter and Mr. Cortelyou need keepers. They have made sworn statements to the Public Service Commission. It is like asking him, "Do you think they committed perjury".

The Master: I have ruled on the objection.

4392 Q. Does the complainant gas company keep more than one set of books of account?

A. It does not.

Q. Are this set which has been brought here to court the only set there is so far as the books here produced——

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial and calling for a conclusion; also as leading.

Mr. Hayward: It is a conclusion of the wit- 4393
ness as to what a book of account is.

Mr. Ransom: We have a right to show whether they kept other ledger, whether these are the only books of the sort here described, and whether there are some other books which are the real books.

Mr. Chambers: He should show the fact as to the books of account generally kept, and then your Honor can conclude whether those are the only books.

The Master: Objection sustained.

Q. Have you produced in court the general books 4394
of the company for the year 1918 concerning which you have testified?

A. They are right here available.

Q. Indicating a number of books at one side of the room?

A. Yes.

Q. Now, is that the only set of books which the company has for the year 1918 of the sort that is in the category of the books produced?

Mr. Hayward: Now, we don't know what category the books produced fall in, because we have not seen them, and they have not been marked for identification. We don't know. 4395

The Master: I think Judge Ransom is a little overcautious in that. I will sustain that objection.

Mr. Ransom: Exception.

The Master: I think what you have got to do, Judge Ransom, is to take a book and hand it to the witness and ask him if that is the only book of the kind covering that period.

4396 Mr. O'Brien: But the proof is already i through this same witness that the books in th commercial department are kept in eac branch——

The Master: I am going to reach that que tion in a few minutes.

Q. Mr. Brundage, I show you a book and ask yo to state what it is, one of these books which yo have produced?

A. It is one of the sundry debtors blotters use by the company during the year 1918.

Q. This being numbered 48, Consolidated Ga

4397 Company?

A. Yes. There were four of them used during th year 1918.

The Master: This is one of them?

The Witness: This is one of the four.

Mr. Ransom: I ask to have it marked fo identification.

Book marked Complainant's Exhibit 188 fo Identification.

By the Master:

Q. Now as to this book that has been marke Exhibit 188 for Identification, is there any oth book kept by the company which covers the sam

4398 matter for the same time that is incorporated in thi book?

A. There is not.

The Master: All right. Now don't offer an more for the time being. You will want to p that book in evidence, won't you?

Mr. Ransom: I want to produce them firs

The Master: Let us take one book at a tim to raise the question that is coming up. As

understand it, Judge Ransom, you claim now 4399
to have laid a foundation for the admission in evidence of these books of account.

Mr. Ransom: I want to ask a few more questions.

The Master: Proceed with them.

Mr. Ransom: I don't know that I can do it until I have had them all produced. They raise the objection that they don't know what they are.

The Master: Can't you limit your questions to this one book?

Mr. Ransom: No, I am afraid I cannot and 4400
lay the proper foundation.

The Master: Go ahead and mark them then.

Mr. O'Brien: Your Honor, I find right here in this book, the New York Mutual Company, and their dealings with Holbrook, Cabot & Rollins, and the Central Union Gas Company and the Northern Union Gas Company, involving materials. Now, the book has to be proven and explained thoroughly before anything can be done, even before it can be marked for identification.

The Master: No, I will let him mark the moon if he can get it here, for identification. 4401

Q. What is this book?

A. This is Section A of the operating ledger used by the company during the year 1918.

Q. How many sections were there?

A. Two sections, indicated by A and B.

Mr. Ransom: I ask to have it marked for identification.

4402 Book marked Complainant's Exhibit 189 for Identification.

Q. Referring to the operating ledger, section A of the year 1918, which is one of the books here produced, is that and Section B, the only operating ledger kept by the company?

A. They are.

Q. For the year 1918?

A. During the year 1918.

Mr. O'Brien: What is an operating ledger, Mr. Brundage?

The Witness: It records all of the company's operations during the year 1918, summarizes the year.

4403

Mr. O'Brien: What does that mean, all of the operations of the company?

The Witness: Just what it says. All of the operations of the company finally reach these ledgers.

Mr. O'Brien: What do you mean by operations, do you mean the manufacturing end of the business?

Mr. Ransom: May I finish my direct before he continues the cross-examination?

The Master: Yes, I think you better wait.

4404 Mr. O'Brien: Your Honor, they have got the cart before the horse now, he has backed up this stuff here and he is referring to the operating ledger, which has not been explained, and we can't tell whether to object or not unless we know what it means.

The Master: Well, I am going to give you plenty of opportunity before they are offered in evidence to find out just what every book is.

Q. Now, do you know Mr. Teele? 4405

A. I do.

Q. Of the accountant department employed by the company?

A. I do.

Q. Is this book, Exhibit 189 for Identification, a book which was by you and under your direction turned over to Mr. Teele?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial. What matters it in this case that he turned over some book to Mr. Teele, your Honor?

The Master: That is what I am trying to 4406
find out. What is the point of that question?

Mr. Ransom: It is all connected up.

The Master: Well, what is the connection?

Mr. Ransom: I will bring that out.

Q. Mr. Brundage, to your knowledge, was this also one of the 1918 books which was turned over to the accountants and statisticians representing defendants in this case?

Mr. O'Brien: Same objection.

Mr. Hayward: If your Honor please, can you substitute Mr. Teele and the accountants of the Public Service Commission for the ordi-
nary safeguards that are thrown around evi- 4407
dence? This is no different from any other lawsuit, Judge Ransom to the contrary notwithstanding. If we depart in the slightest degree from the fundamentals of evidence——

The Master: We won't depart.

Mr. Hayward: Well, then, let's don't. What has it to do whether Mr. Teele saw this book,

4408 or whether the accountants of the Public Service Commission saw it. It is absurd.

Mr. Ransom: Under the authorities it has been repeatedly held in these rate cases that where access to the books and other vouchers on which they are based have been available to the opposite side, the opposing public authorities, that that has a great deal to do with the permissible method of proof in case of a large enterprise which involves the affording of a large scale public service.

The Master: I will sustain the objection on the ground that it has already been covered by
4409 the testimony of this witness to the effect that all of the books were exhibited to the defense.

Mr. Ransom: Exception.

Mr. O'Brien: Will your Honor permit me to just remark here that the witness has stated that they turned over all the books that they asked for?

The Master: Yes.

Mr. O'Brien: Now they are in the attitude of the most of the company's witnesses, as we have heard, that they never give information until we have asked for it.

4410 The Master: A capable accountant has nothing kept back from him that he wants to see.

Mr. O'Brien: Well, I was not speaking for the accountant, but I am talking about the original records from the branch office and in the works.

The Master: Well, that is all right.

Mr. O'Brien: These are merely typewritten

statements here, they are even carbon copies 4411
of records.

The Master: I sustained the objection. I want to get all this on the record and then make up my mind.

Mr. O'Brien: I assume your Honor wants an orderly record?

The Master: That is what I am trying to get.

Mr. O'Brien: Counsel has been referring to some authorities. He might cite some and find they do not apply.

The Master: He has given me a copy of a 4412
memorandum that I will try to read while this is going on.

Q. In keeping the accounts and records which you have described for the year 1918, was it the plan and purpose of the company and its accounting force under our direction to comply with the requirements of the uniform system of accounting?

A. It was.

Mr. O'Brien: I object, and I will say this, your Honor, that asking these questions is an insult to counsel here and also to the court.

The Master: Wait a minute.

Mr. Hayward: I insist that the witness—I 4413
have not been talking any more than necessary, and when I made an orderly objection, before I could possibly utter it, the witness starts his answer out here, and I ask the Master to admonish the witness.

The Master: I was about to tell the witness that just now he should be a little hesitant in his answers. There are apparently a lot of

4414 legal angles that we will have to work a little while on. What was the question?

(The question read by reporter.)

Mr. Hayward: I move to strike out the answer.

The Master: I was trying to find out whether the stenographer had an answer to it first. The motion to strike out the answer is granted. The objection to the question is sustained, upon the ground that we are not interested in what their plan or purpose was. What I will let the witness answer is whether they in fact were

4415 in accordance with the orders of the Public Service Commission.

Mr. O'Brien: Your Honor, I submit, respectfully, that that is a conclusion of law.

The Master: I will take it as a conclusion of fact.

Mr. O'Brien: Well, now, how can he—are you going to let him make a sweeping dictum here that all their books conform to the law, conform to the uniform system of accounts?

The Master: I am going to let him state as a fact whether all these books are in the form required by the Public Service Commission.

4416 Mr. O'Brien: You did not use the word conform.

The Master: Or in the form required by the Public Service Commission.

Q. Well, can you answer that?

Mr. Hayward: I would like to have just one word. I would like to have counsel ask a question of this witness. I don't understand

the Court has asked a question, and if he did, 4417
I did not understand the question.

The Master: I have indicated to counsel the character of question I think is permissible.

Mr. Hayward: Well, let's hear it; let's see if counsel can repeat it.

Mr. O'Brien: I protest, your Honor, against counsel making questions and asking questions that all law school boys know are improper. I don't think it is respectful to the Master or counsel here.

The Master: Well, don't worry about the Master. What I wish you would do, Mr. 4418
O'Brien, is to present your views in the form of an objection. Now, we have no question here. Wait until the next question.

Mr. O'Brien: Well, up to the present time it has been a race as to who will beat the pistol. The witness here is evidently one of the smart aleck kind, like Mr. Alrich, you know——

Mr. Ransom: May I say to the Court that the question I addressed to the witness, and which your Honor sustained the objection to, was the question which was addressed to Mr. Justice Hughes, and was admitted by him. 4419

The Master: Well, I have the highest respect in the world for Mr. Justice Hughes, but I do not always agree with him, and I am not going to accept this question in the form you have put it; I don't think it is correct in form, in spite of any ruling of Judge Hughes.

Mr. Ransom: I only referred to that——

Mr. O'Brien: You ought to have been proud

4420 of that, representing the people, you ought to have been proud of that, indeed, in that case.

The Master: Mr. O'Brien, you have been insisting and protesting a good many times, and I am going to insist that this proceeding be conducted in an orderly fashion.

Mr. O'Brien: Well, your Honor, I am going to check up that statement right now as a reason why that question should be allowed here; it is entirely improper and should not be made——

The Master: What question?

4421 Mr. O'Brien: What boots it whether Judge Hughes received such a question in a similar case?

The Master: I know, but this discussion is entirely unnecessary. I have already ruled.

Mr. O'Brien: Of course, it is unnecessary, and that is why I protest. Judge Hughes!

The Master: I have already ruled as to the way I will act on any decision by Judge Hughes. Where it appeals to my conscience and my sense of what is right, I am going to accept it and will be very glad to have his thought on it, but where it does not appeal to

4422 my sense of right, I am not going to follow it, and that is all there is to it. Ask your next question.

By Mr. Ransom:

Q. Mr. Brundage, will you state whether as a matter of fact, the accounts, the books of account produced here by you, of this company for the year 1918, were kept in the form prescribed by the Com-

ission for the First District, called the Uniform 4423
ystem of Accounts?

Mr. O'Brien: I renew my objection, your Honor.

The Master: Who has the floor first?

Mr. Chambers: I would like to make an objection to that.

Mr. Hayward: I object to it as irrelevant, incompetent and immaterial, it doesn't make any difference whether it was kept in the form that was prescribed by the uniform system of accounts at all. The system of accounts has nothing to do with it.

4424

The Master: Now, Mr. Chambers.

Mr. Hayward: The question of whether it conforms in all respects to the requirement of that system——

Mr. Chambers: I object to it on the ground that it is incompetent and asks the witness to draw a conclusion that they are kept in conformity with the Public Service Commission ruling. That is a question for your Honor to determine. He may say how they are kept, and then your Honor can say whether it is in conformity with the order.

Mr. Hayward: He was not asked whether 4425
it was kept in conformity; he was asked whether it was kept in the form.

Mr. Chambers: The question is one for your Honor to decide.

The Master: The objection is overruled. The witness will be permitted to state whether these accounts are kept in the form required by the Public Service Commission.

4426 Mr. Chambers: Exception.

The Witness: The accountants of the Consolidated Gas Company——

The Master: All you have to say is yes or no.

Mr. Hayward: He said yes.

The Master: No, he did not say yes.

Mr. O'Brien: No, he is going to make a speech.

The Master: No, he is not going to make a speech; he is going to tell me yes or no.

The Witness: I am going to say, your Honor, they are kept in the form required by the

4427 Uniform System of Accounts, with the exception of a few minor points, with which the Commission is familiar.

Mr. O'Brien: I move to have that stricken out.

The Master: Strike out "with which the Commission is familiar". You can't state that.

Mr. Hayward: No, you will have to strike out his whole answer if he qualified it.

The Master: No, his answer is that they are kept in the form required with certain exceptions, and I will have him state what excep-

4428 tions.

Mr. O'Brien: He is going to tell us what he considers minor exceptions.

The Master: Well, I am going to find out whether they are minor or not.

Mr. O'Brien: Well, that is a matter of elaborate proof, your Honor.

The Master: Well, we will see. What are the exceptions?

The Witness: We carry an account under 4429
the title of assessments, representing assessments made by the municipality for grading improvements and items of that sort, for which there is no provision in the uniform system of accounts. We carry an account under the title of laboratory equipment, an asset account, for which there is no provision in the uniform system of accounts. We carry an account under the title of "garage equipment", for which there is no account in the system.

Mr. O'Brien: Will you say that there is no account for it under some other name, that 4430
that subject is not covered?

The Witness: I will take the example of the garage equipment, if I may, counsellor, when the uniform system of accounts was established, the idea of garages and automobiles was a rather new thing, they had not begun to develop 11 or 12 years ago.

By Mr. O'Brien:

Q. Well, they had horses then, didn't they?

A. They did.

Q. Yes.

A. There is no provision in it however for the garage work. 4431

Q. Well, you say that the uniform system of accounts hasn't got any particular subdivision that covers garages?

A. I do.

Q. You are speaking literally now, are you?

A. Technically.

Q. Technically?

A. True.

4432 Q. Technically, yes.

A. We carry an account under the title of "residuals" produced, not provided for in the uniform system of accounts, but provided for as the result of a change in the form of annual report by the commission. We carry an account under the title of "repairs buildings general", representing buildings other than those at works and stations, for which there is no provision in the accounting system. We carry an account under the title of automobile expense, carrying out the thought you have just expressed, because there is no provision
4433 for it at that time when the system was established. And the uniform system of accounts provides a reserve under the title of "accrued amortization", which we—and we establish a reserve under the title of "renewals and replacements".

Q. There you do not conform?

A. In respect of these items I have read, we do not conform in all particulars with the uniform system of accounting.

Mr. Chambers: I don't call that a minor matter, do you?

The Master: We won't discuss that question just now.

4434 Q. If you can—the inference is that that is all, but I would like to have that definitely stated. Are these the only particulars in which you assert you differ from the forms prescribed by the uniform system of accounts?

A. There is a further variation from the uniform system of accounts, because the condition, while they agreed that the system—that the methods provided under the system as promulgated in 1908

in respect to the treatment of residuals should be 4435
changed, they did not wish to change the system, but it was amended—they did amend their form of annual report, and while we break away from them in so far as the system of accounting is concerned, we keep our accounts in such manner as to provide the information which their form of annual report requires us to give them at the end of the year.

Mr. Ransom: You are speaking now of residuals?

Mr. O'Brien: I move that that answer be stricken out. 4436

The Master: No, I will let it stand.

Mr. O'Brien: It is a conclusion of the witness, your Honor.

The Master: I know, but I will let it stand.

Mr. Hayward: I would like to have your Honor permit this question: The upshot of the whole thing is that the annual report is filed in the form prescribed by the uniform system of accounts, but whether or not he will say the books of the company are kept in conformity with the requirements of the uniform system of accounts,—will you say that the books 4437
of the company—you can answer this by yes or no—are the books of the company kept or are they not kept in entire conformity with the requirements of the uniform system of accounts of the Public Service Commission?

The Witness: They are, with these exceptions I have just read into the record, counsellor.

4438 By Mr. O'Brien:

Q. I will ask you now if you have made a complete statement of all the items or elements in which you say you vary from the uniform system of accounts?

A. Yes.

Q. You have not withheld any?

A. No, I don't know of any items I have not covered by that statement.

The Master: Well, that is all, Mr. O'Brien. You will have to reserve everything else for the cross-examination.

4439 By Mr. Ransom:

Q. With the exceptions which you have indicated, are the entries made by the accounting force under your direction in conformity with the definitions set forth in the uniform system of accounts?

Mr. O'Brien: That is clearly objectionable.

The Master: Objection sustained.

Q. Are the entries made in conformity with the system of accounts?

Mr. O'Brien: Same objection.

The Master: We have covered that.

Mr. Ransom: Well, it is a question of form.

4440 Mr. O'Brien: You can plainly see the witness cannot determine what is a renewal and what is a replacement, that is a question of law that your Honor must decide.

The Master: I think this witness has testified the books are kept as required by the Public Service Commission, except with relation to the particular matters which he has fully described, and I think that covers the point which Judge Ransom has developed, that they have

been kept as required by public authority, and 4441
that is all that we want.

Mr. Hayward: Which means that they are not kept in conformity with the Public Service Commission.

The Master: That I am not prepared to answer.

Q. The Commission prescribed the form of annual report?

A. They did.

Mr. O'Brien: I want to make the same objection, and I cannot emphasize it too much, that what the Public Service Commission may 4442
have done in the counselorship of Judge Ransom as counsel, does not obtain here at all, and has not any force, and that, let me illustrate, supposing that the method prescribed by the Public Service Commission in the past only served so far as the rate case is concerned to becloud the issue, to mix it up, to scramble the item of labor over a dozen different accounts and mix the material with labor and all those expenses, so as to make it not feasible and not available for purposes of proof in a rate case, can we by saying that it merely conforms with the system they prescribed, gives 4443
it—pass it along here and accept it? The question here is how much money they spent for material; how much they spent for labor and by keeping it in certain accounts does not give it a certain sanctity, it does not give it the probative force.

The Master: Read the question and answer.

(The question and answer were read by the reporter.)

4444 The Master: I will let it stand.

Mr. O'Brien: Exception.

The Master: Isn't that in the regulations that you read?

Mr. O'Brien: Oh, it is in the law, your Honor, the Public Service Commission law. He is asking the witness about a statute now.

Mr. Ransom: No, I am not. I am asking him about the form of annual report.

Mr. Chambers: The law says that; you are asking him to tell what the law says.

Q. The Company from time to time makes
4445 these annual reports to the Commission in the form prescribed?

Mr. O'Brien: Objected to as incompetent, irrelevant, and immaterial.

The Master: I will accept this. You may answer.

Mr. Chambers: I object on the ground the report is the best evidence.

The Master: I will accept it.

The Witness: We do file an annual report with the Public Service Commission of the First District.

Q. Made up by you or under your direction?

4446 A. Made up under my direction.

Q. And is this annual report made up from the books here produced and the records to which you have referred?

Mr. O'Brien: Same objection to that, if your Honor please, irrelevant, incompetent and immaterial.

The Master: Same ruling.

The Witness: They are prepared from those books and records which I have testified to.

Mr. Hayward: Is it prescribed when that re- 4447
port shall be filed?

The Witness: Yes.

Mr. Hayward: How many times in the last ten years have you had it on time?

A. Oh, I should say, counsellor, that in ten years we have not been obliged to ask for any extension of time in filing the report. In the first one or two years after the report form came out——

Mr. Hayward: When did that report form come out?

The Witness: December 31, 1908, and the reports for those first two or three years being 4448
new, and we being obliged to get our accounts in shape for the new system, there was some delay, but for a great number of years we have not had any delay.

Mr. Hayward: Don't you know as a matter of fact, you never got them in on time until after the year 1915 or 1916?

The Witness: I don't know any such thing, no.

Mr. Hayward: And then after a vigorous fight?

The Witness: No, sir, you are entirely wrong. 4449

Mr. Hayward: I am not entirely wrong, I can prove it.

Q. Were reports also made by the company to the commission of gas and electricity, I believe it was, which preceded the Public Service Commission.

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling.

4450 A. Yes, there were reports filed with the prior commission known, as I remember it, as the Commission of Gas and Electricity.

Q. And has the company filed with the commission a report for the year 1918?

A. We have.

Q. Is this to your knowledge a photostatic copy?

A. That is a photostatic copy of our report for the year 1918.

Mr. O'Brien: That is a report produced in that form in the office building, in the room in the office building reserved for photostatic work?

4451 The Witness: The photostatic work, yes, sir.

Mr. Ransom: Will the commission produce an original copy of this report?

Mr. Hayward: If you would like it. We are not mind readers.

Mr. Ransom: You are asked now to produce it.

Mr. Hayward: All right, we will produce it as soon as we can. I would suggest if counsel wants any of those records the Public Service Commission has, that he let us know a session before, your Honor, and we will try to produce

4452 it on time.

Mr. Ransom: I will endeavor to do that, your Honor.

Mr. Hayward: I will ask the witness if between now and the next hearing he will be good enough to look up the filing dates required by the Public Service Commission for the last six years and the dates when it was actually filed.

The Master: I have ruled, Col. Hayward, 4453
while you were away one day that I would not permit instructions of that kind to be given the witnesses.

Mr. Ransom: Counsel will gladly procure that information.

Q. After the annual report of the company is filed with the commission, is any action taken by the commission and——

Mr. O'Brien: Now, your Honor, I am going to object again. We have wasted about an hour and a half today answering these questions, as to methods in vogue in the Public 4454
Service Commission.

The Master: Let him finish his question.

Mr. O'Brien: Well, he takes such a long breath after every word you can never tell when he is finished.

The Master: Well, he comes from Chautauqua County where they are in the habit of taking long breaths.

Mr. O'Brien: Yes, and that kind of talk is hard to get used to.

Mr. Ransom: All I can do is take long breaths now.

Q. Now, Mr. Brundage—— 4455

Mr. O'Brien: It is a hiatus on the record.

The Master: Well, that is your fault, Mr. O'Brien. Let's get that question on the record. Read the question.

(The question was read by the reporter.)

Mr. Ransom: I will withdraw that last question.

Q. After this annual report was filed with the

4456 commission, did you hear from the commission concerning it?

Mr. O'Brien: Same objection, your Honor.

Mr. Chambers: I make the same objection.

The Master: Which report?

Mr. Ransom: The 1918 report.

Mr. Chambers: Is it time to object? I want to object to that.

Mr. O'Brien: I call the Master's attention to the fact——

Mr. Chambers: I object to it on the ground that anything done by the commission is the best evidence.

4457

Mr. O'Brien: I object to it on the further ground that the period to which it refers was the time when the counsellor for the complainant in this case was counsel for one of the defendants.

Mr. Ransom: That statement is not true.

Mr. O'Brien: The Public Service Commission.

Mr. Ransom: The statement is untrue, this report was not filed during my incumbency of the counsellorship. It is immaterial also.

The Master: I will sustain the objection.

4458

Mr. Ransom: I will withdraw the question.

Mr. Chambers: We have an understanding that when he asks a question we have an opportunity to object before the witness answers.

The Master: The witness is trying to do that, I think.

Mr. O'Brien: I suggest he give us some signal when he reaches a period.

Mr. Ransom: You could not give any such 4459
signal, Mr. O'Brien.

Now, I offer in evidence the operating ledger A of the Consolidated Gas Company for the year 1918, Complainant's Exhibit 189, for Identification.

Mr. Hayward: If your Honor please I object to that——

The Master: We will take you in the order we have established as the practice, Mr. Chambers will be heard first.

Mr. Chambers: I object to it as incompetent, immaterial and irrelevant, no foundation 4460
laid for it, secondary evidence, hearsay.

The Master: Now, Mr. O'Brien?

Mr. O'Brien: Before making my objection, your Honor, I will ask the witness some questions about the book.

The Master: Yes.

Questions by Mr. O'Brien:

Q. Mr. Brundage, I call your attention to the index. Is that in your handwriting?

A. It is not.

Q. Whose is it?

A. The bulk of that handwriting was made by 4461
one of the bookkeepers in the accounting department.

Q. Who is he?

A. A Mr. Reynolds.

Q. Is he still with the company?

A. Yes, sir.

Q. There are some interpolations in a different handwriting, made by somebody else, I take it?

A. There are a few additional items there, sir,

4462 representing accounts that were opened subsequently to January 1, 1918.

Q. I call your attention to the first page entitled "Dist. Capital, December 31st, 1908", and ask you in whose handwriting that is?

A. That handwriting to there (indicating) I do not recognize at the moment, Mr. O'Brien. From there (indicating) on, that is Reynolds' handwriting.

Q. You mean from the month of February on, at the bottom of the page?

A. Yes, that is all of this bookkeeper Reynolds,
4463 who made those entries.

Q. The handwriting on the second page under the title "Recapitulation" with numeral figures, beginning with the figures "8,418,832" is whose handwriting?

A. I do not recognize it and am unable to identify it.

Q. The same for page three?

A. The same for page 33.

Q. Your initials are not on either of these pages I have asked you about?

A. No, sir.

Q. The same for page 4?

4464 A. That is Reynolds' handwriting.

Q. I call your attention to page 25 and ask you in whose handwriting the title is?

A. I cannot identify it, sir.

Q. Is the handwriting opposite the word "December" in the first column different from the handwriting in the item just above it?

A. I should say that it was, but I am not a handwriting expert.

Q. This writing is "General Inspection Audubon 4465
Avenue Property", is it not?

A. No, it is not.

Q. What does it say?

A. "General Suspense, Audubon Avenue Property".

Q. And after that "Audubon Avenue property" you have $55,725.?

A. I find it there.

Q. And that is carried into the total which appears below?

A. It is.

Q. Is there any Audubon Avenue property in the 4466
list of properties identified by the witness Alrich?

A. I do not know.

Q. I call your attention to page 26. Is the handwriting of the title in that of Mr. Reynolds, to whom you have referred?

A. I should say not.

Q. Do you recognize whose handwriting it is?

A. I do not.

Q. Do you recognize whose handwriting the word "Assessments" opposite "December" is in?

A. I do not.

Q. It is different from the handwriting in the title, isn't it? 4467

A. I should say yes.

Q. I call your attention to page 27 under the same title. The handwriting in the first five entries is different from the handwriting in the three entries made below that?

A. It is.

The Master: Mr. O'Brien, may I suggest that you probably have developed the point

4468 that you want to develop without going through the entire book?

Mr. O'Brien: No, your Honor, there are a great many matters I have to go into. I do not want to bore you, but there are a great many matters here. This question brings up——

The Master: It is not a question of boring me, but of developing the point, and then not losing time unnecessarily. If your point is that this book has the handwriting of different men at different times, and under the same ac-

4469 count, some of which this witness can identify and some of which he cannot, it seems to me that you can ask a question that will carry that right through the book.

Mr. O'Brien: I would rather take it up my own way, your Honor. I thought I would depend on Alrich's description of the 15th Street building, but we got a different building yesterday. After we were through with our friend Stark there was a different situation.

The Master: No, that is not altogether so, Mr. O'Brien.

Mr. O'Brien: I am not going to present my

4470 part of this case in capsules to the court.

The Master: I remember after it was brought out in Mr. Stark's examination that there was an extension, that Mr. Alrich did speak of and describe that extension. The only difficulty was that Mr. Stark in preparing his plan did not call attention at the outset to the fact that the plan did not cover the extension.

Mr. Hayward: Not until the last cross-ex- 4471
amination by the last defendant.

The Master: That is accurately stated, but I am not so suspicious of witnesses as most lawyers are. I rather like to assume that the witness is telling the truth.

Mr. Hayward: How are you on gas companies?

The Master: I have had no experience with gas companies except in regard to gas bills.

Mr. Hayward: Mr. O'Brien, may I interrupt you a moment? It seems to me, your Honor, that this form of proof—I do not pre- 4472
tend to be infallible, but I do not accept what Judge Ransom says in his grandiloquent way about having authorities and verbatim proof that this is the way to offer evidence in this case. He has given your Honor a memorandum and it may be good law and may be bad law, but I cannot accept his statement because he appears for his client. It is a radical departure. If they have a *bona fide* contention that has merit in it—I do not say it has, I do not know; it is novel to me. But I say I am not infallible. He has filed this memorandum covering the theory on which 4473
he offers or expects to offer in the future—although we have stumbled over this point already in the case—on which he expects to continue his proof in regard to this accounting system. Wouldn't it be fair to us all to let us see what his contention is?

Judge Ransom says he wants to save time, and he reiterates and reiterates it, and yet he

4474 never gives opposing counsel a chance to meet him half way. He never does anything until he slowly and mysteriously pulls out a memorandum from his pocket, prepared in a mysterious way—it must be during the darkest hours, because we are here all during the daylight hours—and asks us to answer at once right here. I am not that kind of a lawyer. We ought to settle it and settle it right, and I would like to have some time to go over and see if I am mistaken. Either he is mistaken or it is I. I think it is he. But he slips to
4475 your Honor a memorandum which he says supports the law. It is a novel theory to me. I will be industrious and endeavor to go into the books when I see what his theory is. You would think there was a jury in the box going to be impressed by these fireworks and all that. It is not that way at all. If he outlined his theory of the case, if he outlines his theory here on which he thinks, for instance, his evidence is admissible in this form, and gave us his authorities for it, I will agree to go and prepare myself on it in a very few hours' time, and if I do not think I have a *bona fide* and a
4476 fair ground of opposing I shall not oppose it, I will o. k. it.

Mr. Ransom: Your Honor asked me for the memorandum as I gave it. So far as the theory on which these books are receivable in evidence is concerned, the theory on which they are receivable is the theory on which both the Public Service Commissions in this State have repeatedly and without exception so far as I

know, in the case of either commission, at any 4477
time in its history——

Mr. O'Brien: Then that discredits them at the start.

Mr. Ransom: It does not in the mind of Commissioner Hayward.

The Master: Let Judge Ransom finish his statement.

Mr. Ransom: The theory on which they invariably accept them, and there never has been a case so far as I know where they have not been received—subject to cross-examination, subject to impeachment, subject to production 4478
of vouchers upon a point where it seems a master, or in the case of the Interstate Commerce Commission the examiner, thought the vouchers should be produced. But here we have a situation where it would take years even to physically mark the vouchers Mr. O'Brien blandly says must be produced here. What Mr. O'Brien is endeavoring to impose upon this company and upon this court is a method of proof which if it should be followed by your Honor would mean a ruling by your Honor that there cannot be justice for a large enterprise engaged in a public service, because 4479
the method of proof is not physically possible. Now, this court has plenary authority as to directing the mode——

Mr. O'Brien: Plenary authority, did you say?

The Master: Mr. O'Brien, please do not interrupt.

4480 Mr. O'Brien: I did not get that pronunciation. I would like to insure the word. Plenary authority is good.

Mr. Ransom: The mode in which matters requiring evidence shall be proved before your Honor, and we believe that under the practice of the Interstate Commerce Commission, of the Federal Courts, of the Public Service Commissions of this State, of very numerous State decisions, and the practice even in the prior suit regarding these companies, these books were received in evidence before.

4481 Mr. O'Brien: That condemns them also. Your Honor, I want to proceed with my examination. It is very essential before I make my objections that I call your attention to the matters in this book.

Mr. O'Brien: Your Honor, I want to proceed with my examination. It is very essential before I make my objections that I call your attention to numerous matters here in this book.

The Master: I am going to let Mr. O'Brien proceed with his line of inquiry to a reasonable extent for the purpose of developing the

4482 objection which he proposes to make.

If Judge Ransom has a copy of this memorandum he has given me I think it would be well if he would give it to Colonel Hayward.

Mr. Ransom: It is done.

The Master: If Mr. O'Brien and Mr. Chambers want a copy I suggest that you give it to them. If Mr. O'Brien does not take up all the time that is left this afternoon I will ad-

journ to give an opportunity to consider this 4483
question.

Mr. O'Brien: I don't think I will be finished to-day, your Honor.

The Master: Then I am not going to adjourn it for the purpose of having an examination of the law made.

Mr. O'Brien: You can do as you see fit about that. Is it a penalty that is going to be put on me not to be allowed an opportunity to look into the law because I see fit to examine the witness preliminarily?

The Master: Mr. O'Brien, I should like to 4484
have given Colonel Hayward all the time I could. However, if you deem it necessary to use all the time on this line of examination I am simply calling attention to the fact that I will not be able to give Col. Hayward any time.

Mr. Hayward: I should have a reasonable time notwithstanding Mr. O'Brien's cross-examination.

The Master: You will have to do what I have frequently had to do, work at night.

Mr. O'Brien: It will only be another illustration of the expedition that is being prescribed in this case. 4485

The Master: I don't think you are going to take the rest of the afternoon, because I think you will develop your point before five o'clock.

Mr. Ransom: I am having to work at night.

The Master: Well, you are getting paid for it.

Mr. Ransom: I hope we all are.

The Master: I will dispose of it when Mr.

4486 O'Brien gets through. We will see. This question is so important and means so much in this case with reference to a time saving device that I am willing to assume that it may be saved by giving counsel a fair opportunity to familiarize themselves with the point raised; and in view of Colonel Hayward's very frank statement that he has not had it before, I am inclined to be rather liberal in the allowance of time, consistent with the situation. Go ahead, Mr. O'Brien.

Mr. Ransom: I would like to have a little
4487 more time myself. I dictated this memorandum last night and have not read it over until a few minutes ago when I glanced at it. I think there are other cases to the same effect.

The Master: Go ahead, Mr. O'Brien.

By Mr. O'Brien:

Q. I call your attention to page 28 of this book and ask you in whose handwriting it is?

A. I cannot identify it.

Q. The title is "General structures", is it not?

A. It is.

Q. There is a subdivision entitled "General office building"?

4488 A. There is.

Q. There is under that title, general office building, "Preliminary drafting", to the amount of twenty-three thousand and odd dollars?

A. There is.

Q. Architects' fees $12,430?

A. Yes.

Q. And an item called "Miscellaneous" with figures opposite?

A. Yes. 4489

Q. "Excavation"?

A. Yes.

Q. "Shoring"?

A. Yes.

Q. "Foundation"?

A. Yes.

Q. "Masonry, granite fireproofing and waterproofing"?

A. Yes.

Q. "Structural steel"?

A. Yes.

Q. "Ornamental iron"?

A. Yes. 4490

Q. "Limestone, hardware, carpentry and metal work"?

A. Yes.

Q. "Glass and glazing", and many items that would enter into building construction?

A. Yes.

Q. And figures opposite these general headings?

A. Yes.

Q. Is there opposite the figures in the column any reference to any other book of account?

A. No, those balances——

Q. Wait a minute. Now, answer the question 4491 yes or no.

The Master: He said no.

The Witness: Ask the question again.

The Master: You have answered, you said no.

Q. There is a title here, "Voucher or journal entry number"?

A. Yes.

4492 Q. And all the way down opposite the item there is a blank space

A. That is right.

Q. There is also under the same title, "G. O. building, easterly extension"?

A. Yes.

Q. With similar items covering various kinds of building construction?

A. Yes.

Q. And that continues over into the next column?

A. Yes.

Q. And then you have under 57th Street build-
4493 ing, items and figures covering plumbing, wrecking, preliminary miscellaneous, and items of a similar character to those I have already referred to in connection with the general office building?

A. There are.

Q. And under the column entitled, "Voucher and journal entry number", there are no entries made?

A. No.

Q. On pages referring to some other book?

A. No.

Q. Referring to page 29, you have the same title, have you not?

A. Yes.

4494 Q. Under "general structures"?

A. Yes.

Q. Is there any reference to any particular building in connection with which the work described is represented to have been done?

A. Yes.

Q. What is it?

A. The first item I find the reference to the 57th street building, with subdivisions of the account,

scattered down the page we find references as to 4495
structures for which construction expenditures were made during the year.

Q. And they refer to different buildings as the entries are made?

A. They do.

Q. There is an item here, Dahlstrom Metal Door Company?

A. There is.

Q. Now, on page 29 there are numerous figures in pencil with totals, are there not?

A. There are.

Q. And they are written in irregularly and en- 4496
closed in several circles?

A. Yes.

Q. There is a reference in one of them to Audubon avenue, is there not?

A. I find it so, yes.

Q. Is there any initial by you on either of these two pages?

A. No, sir.

Q. I call your attention to page 34, and ask you whose handwriting it is in?

A. I recognize the handwriting referring to entries during the months of May, June and July, as Mr. Reynolds, to whom I have referred. January 4497
and subsequent months I cannot identify.

Q. Do you know Mr. Devoe, the plumber?

A. Only by reputation. I have seen his bills. I don't know the gentleman.

Q. Do you know Sloan and Fuller?

A. No, I don't know them personally.

Q. Have you ever done business with that firm?

A. I could not say.

4498 Q. Do you know Smith and Rosenfeld?

A. Counsellor, what do you mean by asking if I know them?

Q. Are you acquainted with that firm?

A. Personally?

Q. Yes.

A. No, sir.

Q. Have you ever done business with them?

A. I could not say.

Q. In behalf of the complainant company?

A. I could not say.

Q. Did you draw checks for any of the items on this page?

4499

A. I did not.

Q. I call your attention to page 35. There is an item called "Sundry Debtors", is there not?

A. There is.

Q. Is there opposite to that, under the column entitled, "Voucher or Journal Entry Number", any reference to any journal or any voucher?

A. There is not.

Q. I call your attention to page 36, "Automobiles and Accessories". Is that in Mr. Reynolds' handwriting?

A. A part of the account is. The other part I do not identify.

4500

Q. The part that is latterly put in here, October and December, you don't know?

A. No, I cannot identify that handwriting, nor that handwriting (indicating).

By the Master:

Q. Meaning January?

A. January, October and December.

Q. The rest of it is Reynolds' handwriting?

A. Yes.

4501

By Mr. O'Brien:

Q. I call your attention to page 51, "Works and Station structures" is the title, 21st street station. That is the title?

A. It is.

Q. The first entry is "Harrison E. Gawtry, *et al.*, 838.75"?

A. Yes.

Q. Is that in Mr. Reynolds' handwriting?

A. It is not.

Q. It is a different handwriting?

A. It is.

4502

Q. Do you know whose it is?

A. I do not.

Q. Do you know whose handwriting it is just below?

A. I should identify the entries from February to August inclusive, as made by Reynolds.

Q. There are various references made to pay roll accounts?

A. Yes.

Q. Drafting suspense account?

A. Yes.

Q. Miscellaneous works expense, F. and F.?

A. Yes.

4503

Q. Is your signature or your initials on this page?

A. It is not.

Q. The same answers you would give with regard to pages 52 and 53?

A. Yes.

Q. 54 and 55, as to the handwriting?

A. I am unable to identify all the handwriting.

4504 Q. And these pages have no reference marks of yours on them?

A. No.

The Master: You have not initialed any of these pages, have you?

The Witness: No, your Honor, I have not.

Q. You have here a construction account in the 14th street station?

A. I have.

The Master: Mr. O'Brien, before you go any further I would like to ask the witness to explain this General Structures account. What is that, a recapitulation or copy from some other book?

4505

The Witness: The items to which he referred are the items in that account carried forth in detail as of January 1, 1918.

The Master: In what book?

The Witness: From the operating ledger of that year.

The Master: Of the preceding year?

The Witness: Yes, sir.

Q. That goes back, originally, doesn't it, to the expense of putting up that building?

A. Yes.

4506 Q. They are carried from year to year?

A. Yes, sir.

Mr. O'Brien: Your Honor, you can see how we have got to go back to that. This involves expert testimony and every possible kind of accounting, and to accept it in this aggregate form—it should not need any argument, but I am going to develop it as I go along.

The Witness: I might say, for your infor-

mation, that there was an account with this 4507
same title, "General structures" in the ledgers of December 31, 1917, and whatever balances there are as of that date were carried forth into the 1918 ledger in detail. Then we opened this account under the same title for the construction work performed on general structures during the year 1908, to which we passed from sundry creditors vouchers, and payrolls, and other vouchers, the charges for this work.

The Master: What was the necessity for carrying the balance from the 1917 to the 1918 4508
ledger?

The Witness: Because this 1918 ledger contains a complete statement of the cost of the company's property.

Mr. O'Brien: Your Honor can see that to verify this and to prove it we have got to go back and find out all the detail of the erection of this building. They simply take a short cut, and would not put on an expert to prove the cash value. They ask you to assume that these figures are correct, because they have gone through a certain system. I am amazed 4509
at such an outlandish proposition. We have a page under this same title where there are a lot of interpolations pencil marked, all written in here, we don't know whether they conform or not, but the method shows a slipshod way of doing business. I am referring to that on the question of the reliability of the record, apart from the legal question.

4510 The Master: I should disregard these pencil memoranda in considering the book as such.

The Witness: I will explain that, your Honor, if I may.

Mr. Ransom: Your Honor, the complainant does not offer these books to prove the value of property. We offer to prove the receipts and expenditures for the year 1918, not the value of property.

The Master: Well, how about expenditures with reference to properties?

Mr. Ransom: Well, expenditures for that
4511 year of course.

The Master: For that year?

Mr. Ransom: Yes.

Mr. Hayward: Then that would go right back to the other.

The Master: In other words, in offering this book, you practically want me to disregard balances carried into the books.

Mr. Ransom: So far as property is concerned, yes.

The Master: Well, as to anything else.

Mr. Ransom: I should think so, yes; I don't know of any balances that are carried in except
4512 these.

The Master: Are any balances carried in in connection with other accounts, Mr. Brundage, except this structures account?

The Witness: Every account that had a balance in it as of December 31, 1917, is carried forward into the 1918 ledger.

The Master: As I understand Judge Ransom's attitude in offering this book, he offers

it in so far as the court may conclude that 4513
these entries were made in the usual course, and are of some probative force.

Mr. Ransom: We offer it to show transactions during the year 1918.

The Master: You do not claim that items showing credit balances to or against an account have any probative force?

Mr. Ransom: We do not offer it for that purpose. That is, if we have to prove transactions in any other year we will offer proof as to that year.

The Master: To illustrate, take pages 28 and 4514
29. The entire page 28 shows balances—is that right, Mr. Brundage?

The Witness: That is right.

The Master: Would you want me to disregard page 28 entirely?

Mr. Ransom: This is the operating ledger and is offered only as such. Of course one of the difficulties which I anticipated in offering merely one book to present this issue was the fact that of course many other things are shown in other books. Our offer is simply to show by the 1918 book 1918 transactions, in so far as they have financial aspects, that is, we show 4515
by the 1918 books the 1918 expenditures.

The Master: I want to get it clear in my mind.

Mr. O'Brien: Won't your Honor let me develop this, because I am not nearly through.

The Master: I know you are not, and I am not going to stop you.

4516 Mr. O'Brien: It is a misnomer to call this an operating book.

The Master: I never will take a book that is copied from some other book. That I will not do. The only basis for the rule that Judge Ransom is contending for is, entries made daily in the regular course of business from day to day, not a transcript from some other book. Now I am confining myself to an inquiry as to page 28, so as to get clearly on the record Judge Ransom's attitude with reference to it.

Page 28 is clearly a copy of entries made in
4517 the regular course of business in other books. It is not in any sense a book of original entry, not even on the theory that you advance, Judge Ransom.

Now, the first item here is a balance—why is that in another column?

The Witness: This column is used for the totals. The accounts that are carried in detail are here and footed.

The Master: The first item is 66th street emergency wagon shed. What I have just given is in pen and ink. Then comes the word "forward", apparently, and opposite that in
4518 the second column $5,223.54. Now the witness' testimony, as I understand it, is that on the first of January, 1918, the 66th street emergency wagon shed had cost the company $5,223.54.

The Witness: That is correct.

The Master: And that this entry in this book was simply a statement of the balance shown in other books?

Mr. Ransom: We don't offer it to prove that 4519
balance.

The Master: Do you expect me to disregard that entirely?

Mr. Ransom: Surely.

The Master: As having no probative force as to what the amount really was that the 66th street emergency wagon shed cost you. Is that correct?

Mr. Ransom: Yes, we do not offer it for any such purpose.

Mr. O'Brien: That is original cost. They would rather keep that.

4520

Mr. Hayward: I may be stupid about this thing, thick to-day and all other days, but if the book is not offered for that, what is it offered for?

Mr. Ransom: The operating figures are all there.

The Master: His offer is, taking page 29, he says here that that entry here, 1/25, was made in regular course at that time, from original sundry creditors' bill No. 4308, and that that entry shows or tends to prove an actual expenditure of $1,037.75 on that date. He offers it as proof of that fact.

4521

Mr. Hayward: This 1/25 being the date when somebody rendered a bill, and not the date when the service was performed?

The Witness: The date of the Dahlstrom Company's bill to us.

Mr. Hayward: Not the date of the service?

The Witness: No, the date of the bill.

Mr. O'Brien: Just a minute, your Honor;

4522 I will show you here the unreliability of the record. Here they have taken expenditures that are apparently repairs; Mr. Harkness Devoe puts in $18 worth of plumbing, and Peter McKay, the painter, puts in $67 worth of work, and O'Rourke, the plasterer, is in on the plastering, and puts in $24 worth of work, and all these little items they keep on adding to the original alleged cost of the building in the General Structures account, carrying on the total of $2,985,000 down through page 29. I only cite that to show you what a perfect mine of danger there is in the proposition

4523 made by Judge Ransom to take and hand that into this case, without anything except the dictum of the witness that they have a system which is infallible. It is the most outlandish proposition, I think, that was ever made in a court of law.

The Master: Go ahead with your questions.

Mr. Hayward: This is not a court of law. It is a court of equity.

Mr. O'Brien: I might say here too, that so far as the foundation goes, we have seen already that there are various expenditures

4524 made for the affiliated companies, for the various properties that have been shown not to be in the gas-making business, and there are a dozen things that would have to be established before the books could be offered, on the theory that Judge Ransom is right as to the law. There hasn't been anybody to come on here and show that they are making gas yet. They have not brought the chief engineer to show

they are putting out any gas or buying any 4525
coal.

The Master: Go ahead with your next question.

Q. I call your attention to page 36. This is called Automobiles and Accessories, is it not?

A. Yes.

Q. Do you recognize the handwriting?

A. In part.

Q. And in part, no?

A. And in part, no.

Q. And there are references made to——

A. There are references made to journal entries, 4526
payrolls, sundry creditors' vouchers.

Q. Have you produced any payrolls in court to-day?

A. I have not.

Q. Have you produced any time books in court to-day?

A. I have not.

Q. Have you brought here to-day any of the manufacturing books, so-called, of the various stations of the company?

A. I have not.

Q. Have you produced here the manufacturing 4527
books or the books of account of the Astoria Company, or any of the affiliated companies?

A. I have not.

Q. Are there any initials or marks of yours on this page 36?

A. No, sir.

The Master: He says there are none anywhere in the book.

4528 Mr. O'Brien: I will avoid making that inquiry any further.

Q. I call your attention to page 52. This is a handwriting we have not seen before, isn't it?

A. I do not recognize it.

Q. Isn't it different from the handwriting on the other pages I have shown you?

A. I would not venture that assertion.

Q. Will you point to some page that you think there is a similar handwriting that we have already gone over?

A. Yes, that handwriting there looks like it.

4529 The Master: Pointing to page 36, items under October and December.

Q. Now, this is an account entitled "Construction, 99th Street Station Works and Station Structure"?

A. It is.

Q. The first item is general office salaries and janitor's department, is it not?

A. Yes.

Q. That "G. O." refers to the General Office, does it not?

A. Yes.

Q. And that amount is incorporated into this

4530 particular account?

A. It is.

Q. Then we have an item opposite the word "December", "G. O. salaries, janitor's department, $151.52"?

A. We have.

Q. That amount is incorporated in this particular account?

A. It is.

Q. We have several payments noted to the David 4531
Killoch Company?

A. Yes.

Q. Do you know what business they are engaged in?

A. I do not.

Q. Do you know the Sibley-Pitman Electric Corporation?

A. No, sir.

Q. Do you know E. B. Latham Company?

A. No, sir.

Q. Do you know the business in which the two latter companies are engaged? 4532

A. I do not.

Q. There are references made on this page to various vouchers?

A. Yes.

Q. We have on page 53, Construction Account, 63rd Street Station Works and Station Structures?

A. Yes.

Q. And an entry made for draftsmanship of one cent?

A. No, I find no entry on that page.

Q. Isn't that one cent?

A. I should say not.

Q. Well, it refers to some voucher, doesn't it? 4533
It refers to voucher or journal entry No. 45, doesn't it?

A. There is no posting there, counsellor.

Q. Then it is either blank, or it is one cent?

A. No, it is a little pencil tick.

Q. Page 54 is entitled "Construction", and the words "65th street" stricken out by a red ink mark?

4534 A. Well, there seems to be a red ink mark there, but it undoubtedly applies to the 66th street station.

Q. It does?

A. Unquestionably.

Q. Over on the same line it says 111th street station, doesn't it?

A. Not on the same line. It is two different accounts. There is the split and the book is so rolled.

Q. You think that is a split?

A. I think so.

4535 Q. Can you say whether this draftsmanship opposite the word "January" is to be applied to the account "Construction 65th street station" or to 111th Street?

A. It should go to 65th street and is already recorded in the book.

Q. Under the title "111th Street station works and station structures" you have an entry "Harding Contracting Company $300.00".

A. Yes.

Q. In whose handwriting is that?

A. I should say it is in Mr. Reynolds'.

Q. You are not sure?

4536 A. I believe it to be.

Q. Do you know the Harding Contracting Company?

A. I do not.

Q. Do you know what business they are engaged in?

A. I do not.

Q. I call your attention to page 55, "Construc-

tion 132d Street works and station structures" and 4537
ask you if you know whose handwriting that is in?

A. I am unable to identify it.

Q. The three entries are draftsmanship and suspense, are they not?

A. They are marked drafting suspense.

Q. Drafting suspense?

A. Yes, sir.

Q. And reference is made to the column there of some other book account?

A. To journal entries.

Q. The Kingsbridge station works and station structures account is on page 56? 4538

A. Yes.

Q. And in whose handwriting?

A. The same observations, counsellor. I recognize the handwriting of entries during April, May and June, not the others.

Q. Most of the items are for drafting suspense?

A. No, I should say a very small portion of them are drafting suspense. The biggest item in there is the last item.

Q. There are a few?

A. Yes, there may be four or five of them.

Q. The last two entries of substantial amounts are of the American Fence Construction Com- 4539
pany?

A. Yes.

Q. Do you know that company?

A. I do not.

Q. Do you know where they do business?

A. I do not.

Q. Do you know where their office is located?

4540 A. I do not.

Q. Did you ever do business with them?

A. I could not say.

Q. Page 57, 14th Street station, "Accessory equipment and work." Several entries there made in whose handwriting?

A. I do not recognize it.

The Master: Mr. O'Brien, I am going to ask you to declare the purpose of this examination.

Mr. O'Brien: The whole purpose of it is, your Honor, that it shows first that this is not a book of original entry and does not give us the original record of the outlay of money; sec-
4541 ondly, it shows that the witness is not acquainted with the details of the book, that he does not recognize the handwriting; thirdly, it shows that there is no check mark of his to indicate that he has audited it; fourthly, it shows on its face an entire lack of any audit on the part of anybody else; fifthly, it indicates so far as these accounts are concerned—and these are capital accounts we have gone into so far—the reference made to expenditures which apparently are recorded in some other place, and the records of which would have to
4542 be produced before you can offer this in evidence.

The Master: Haven't you developed those points sufficiently?

Mr. O'Brien: No, we have gone now largely to repair accounts. Of course, right here it is clear too that the books are erroneous, because they are including in a capital account ordi-

nary expenses like painting and plumbing. 4543
There is a vital error.

The Master: But you have developed that, haven't you?

Mr. O'Brien: Now, I want to pass over——

The Master: I am not going to let you go through the four or five hundred pages of that book.

Mr. O'Brien: I am going to show you, your Honor, before I get through that we have got to go so far as the manufacturing end of the business is concerned and have got to produce the original records. Of course, when I say 4544
that I have in mind that Judge Ransom tries to reduce that to an absurdity by saying that you have to bring in vanloads of records and so on, and we would be Rip Van Winkles before we finished the case.

I am not going to tell him how to prove his case, the quantum of proof necessary to come within the rule. But, your Honor, you have got to get for this year 1918 that they are covering and you have got to bring in these original records. You have got to establish the reliability of the men who make the first records. When you go into that you may find that 4545
the whole house of cards will fall to the ground.

As I say, so far as any gas works are concerned, take the coal, oil and labor, the quintescence of information on that subject is the manufacturing book. It is a simple book and the medium through which the information gets into that book from its original sources is through reports made by the gas-makers, and

4546 the gas-makers' foremen and the men charged with the weighing of coal and measuring of oil. Those things come in due course of business under the works' office. There is a clerk —not an elaborate lot of clerks—but take 99th Street and 21st Street, they may have two or three clerks handling all of this information and they make up this manufacturing book and they make it up from original records.

Now, if we had those records here we might apply ourselves to certain tests, to determine the reliability of those records, and your Honor would determine just how far reasonably we would have to go in order to establish the reliability of the manufacturing books. But on the question of the making of gas, your Honor, the quantum of gas made at 21st Street and at 99th Street, the two plants that this company operates, is inconsiderable compared with the amount of gas they sell their consumers, and there is a great big element in this case involved in the price they are paying other companies for gas, some of their subsidiaries, for the gas they are sending out to their consumers.

4547

4548 My view of that is—I may say by way of parenthesis they have got to prove how that gas is made, whether it is made economically and through efficient methods. In other words, whether they are paying too much for the gas they are receiving from that source. But to get back to what I am driving at, I am speaking now only of the manufacturing end of it, you have to have these manufacturing books in,

not the 10th or 12th or 15th entry that is made 4549
in some book of expense.

The Master: Mr. O'Brien, this book now offered in evidence contains 1180 pages. You have proceeded to the 56th page in developing I think every point you are trying to develop, namely, that the book is not in the handwriting of this witness, that he has not checked the handwriting, that some of the entries which are made in there as you claim are not applicable to the case as you say it must be presented, that handwriting or some of it is recognized by the witness, some is not. 4550

Mr. Hayward: And would you add to that, your Honor, that the entries were not made in this book, as shown by the testimony of the witness, under his immediate supervision, so he has not personal knowledge of the accuracy?

The Master: I would not go as far as that.

Mr. Hayward: Ask him.

Mr. Chambers: Might I ask him if the vouchers are in existence?

The Master: No. The cross-examiner, Mr. O'Brien, has brought out certain points. I will not attempt to summarize them all, because I may omit something, but what I am getting at 4551
is this: I asked Mr. O'Brien what he expected to show, he said that his cross-examination showed five I think, or six, different points.

Mr. O'Brien: Those are observations I have made so far. I have not seen this book before, your Honor. I may make a hundred more observations as to the defects in this proof before I get through. Here is the coal account.

4552 The Master: All right, let us take the coal account.

Mr. O'Brien: Here is a reference made to various coal companies. That involves the whole question of the method of their making contracts for coal, whether they made reasonably wise contracts.

The Master: That has nothing to do with this question now, Mr. O'Brien. The only question before me now is whether I shall admit this book in evidence.

Mr. Chambers: Without further proof.

4553 The Master: Without further supporting proof.

Mr. O'Brien: You Honor absolutely cannot do it without the underlying data.

The Master: The question of whether I can or can not admit this book in evidence will be threshed out and argued out so we will understand it. You asked for permission to cross-examine this witness, to bring out certain points with reference to the book. I am not going to let you go through 1180 pages to do it.

Mr. O'Brien: Will your Honor let me turn to some other certain kinds of accounts that

4554 differ from those already in?

The Master: Yes, I will let you do that, but I am not going to let you go through 1180 pages to get the testimony in again and again, the same thing—Do you recognize that? I recognize some of them. Are there vouchers numbers here? Do they refer to journals? Yes. It is the same thing over and over again.

Mr. O'Brien: I will avoid repetition, your 4555
Honor.

The Master: Take your coal account and let us see what happens.

Mr. O'Brien: I respectfully submit, not having seen this book before or inspecting it before I make my objection, I am entitled to look through it.

The Master: I will adjourn now and let you look through it.

Mr. O'Brien: That would save time. I would go through a rapid examination to-morrow morning and get through rapidly. 4556

The Master: All right, I will adjourn until tomorrow morning and let you look through it.

Mr. Chambers: Because this is a serious matter, and I have read Judge Ransom's memorandum and would like to ask the witness a few questions tomorrow morning myself.

The Master: Yes, for all purposes of examination leading up to the question whether this book is admissible in evidence.

Mr. O'Brien. All right, your Honor, that would very likely avoid the repetition.

The Master: Col. Hayward, would you need any time beyond the ordinary adjournment 4557
until ten o'clock tomorrow to look through that memorandum of Judge Ransom?

Mr. Hayward: I do not think so, but you know where you get when you get into a proposition like that.

Mr. O'Brien: This is too serious a matter, your Honor, to foreclose us from the right to

4458 present a memorandum. I dare say counsel have spent three years presenting this case.

Mr. Ransom: I spent about three hours last night on this matter.

Mr. O'Brien: That is all right. Others have spent a lot of time on the case, and he asks us to spend three hours to take up a point of law——

Mr. Ransom: The statement is absolutely untrue. Those statements should not be made.

Mr. O'Brien: Do you know how long some one else has been working on this case?

4559 Mr. Ransom: Yes.

Mr. O'Brien: Do you know how long Mr. Garver has been working on the case?

Mr. Ransom: Yes.

Mr. O'Brien: Mr. Carter and Mr. Cortelyou.

Mr. Ransom: Yes, I know your statement is not true,—is not even relatively true.

The Master: Le us end this discussion.

Mr. Hayward: Do I understand after this, our preliminary cross-examination on the admissibility of this book, Judge Ransom will——

4560 The Master: The book is offered.

Mr. Hayward: In spite of the fact that Judge Ransom says that the books of the company have been open to our inspection for one, two or three, or whatever he claims the months to be, I have never had any idea even of the method of procedure that Judge Ransom would pursue, that having been perhaps very prop-

erly kept in Judge Ransom's sole possession, in 4561
spite of our—Please let me finish once, Judge.

Mr. Ransom: I have not interrupted you yet.

Mr. Hayward: Now, then, it seems to me with this book in our possession and available, with the idea that it is going to be offered in evidence, and as a fair sample perhaps of the line of procedure of the other book evidence that will be produced, it would not be asking too much, your Honor, to let us have a fairly reasonable time to take the book and analyze it and perhaps go to the company and see—whether they are in the court room or not— 4562
the data upon which this book is predicated, available for verification, inspection and checking up, and all of those items, and also a reasonable time, whatever your Honor might think it was, to look up the law on this case.

I think the law part of it will be the simplest part of it. Mr. O'Brien wants that book. I do not pretend to be an accountant or expert on accountancy. I would like to have the benefit of the assistance of some experts from the Public Service Commission to go over this book with me and I suggest it would not be an unreasonable request, this being the key to the 4563
whole situation, the whole evidentiary situation that confronts us, if we take until Monday to get ready on this proposition. As this book goes, so all the others will undoubtedly go; isn't that so?

The Master: I should say so.

Mr. Ransom: My theory of this case, as here disclosed, is nothing novel to Colonel Hayward. I am sorry he has not read about it. We have

4564 made up the tabulations from these books for the purpose of checking. They have been furnished to the defendants long ago. The man who has had charge of the commission's staff, who has been at work up there on this book and the other books, has been here all the afternoon aiding the defendants with respect to the matters set forth in these books——

Mr. Hayward: I beg your pardon, he has not addressed a word to me today.

Mr. Chambers: I do not even know him.

Mr. Ransom: He has been here and he is
4565 here now. These books have been and will continue to be open to the defendants in this case at the company's offices as before. The commission has an absolute and a continuing right—not only a right but a duty of keeping informed regarding these matters, regarding the property. The commission cannot claim they know nothing about these accounts. For any man to come into this court and say he knows nothing about the property or accounts of this corporation is to claim he has not performed his duty, if he had a duty, with respect to the Public Service Commission.

4566 Mr. O'Brien: We ought not to start in talking about public service commission duties.

Mr. Hayward: I had a good counsel when I was public service commissioner to perform that work for me, and that was Judge Ransom.

Mr. Ransom: Only part of the time, fortunately. These books we will be glad to have fully examined, with all the vouchers they have been examining. I dare say that most of

the vouchers referred to in this book have al- 4567
ready been examined. We have been furnishing them with thousands of vouchers up there. The checks have been elaborate and complete, at least so far as the Commission is concerned.

Mr. Hayward: When you say we, do you mean we or the commission?

Mr. Ransom: I mean furnishing the commission accounts.

Mr. Hayward: Do you mean we or the company?

Mr. Ransom: I say furnishing by the company to the accountants of the commission, 4568
and to some extent, I do not know to what extent, those to the Attorney General have been very voluminous. We shall be glad to have both the books and the accounts and the voucher and the records, everything examined to their full satisfaction, but what we are now concerned with is this question of the method or mode of proof.

We recognize that on some of these matters like coal and oil and construction, things of that sort, we shall have to furnish certain supporting data. We recognize that with respect to operations, with respect to use of facilities, 4569
transfer of gas and so on, we shall have to put in full proof, but what I do insist upon is that we shall not be forced to a method of proof which is a virtual and physical impossibility. This is not a question of what shall be proved, of course. The ultimate facts here have got to be proved. This is a question of the mode of proof. No doubt we are going to have to

4570 fully prove, but a step in that proof, subject to connection, subject to verification, subject to impeachment from any source, subject to all that has been disclosed by this full investigation that has been in progress, and which is the duty of the public authorities, both the Commission and the taxing authorities, and so on,—we say that we should not be put to a mode of proof which excludes these books as a step in that proof.

The Master: Judge Ransom, you have made a very long and interesting statement, which
4571 does not in any manner, shape or form meet the point that I am now trying to dispose of. You have offered a book in evidence; it has 1180 pages. It is typical of most of the books that are to be offered, very large, heavy, voluminous books. Colonel Hayward very frankly takes the position that the rule of law you invoke is novel to him; he wants a chance to look at it. I have interrupted Mr. O'Brien's examination, by saying I will not let him go through 1180 pages in open Court, and I offered to adjourn Court to let him look over the book and see what he wants to bring out.
4572 Apropos of that, Colonel Hayward suggests that the hearing be adjourned until Monday to give counsel a chance to confer and to look at the book and verify it.

Mr. Hayward: And write a brief.

The Master: You need not write a brief.

Mr. Hayward: Well, to write an answering memorandum if we see fit.

The Master: To present the matter to me

either orally or in writing and to thresh out 4573
this whole question which is the crux of this branch of the proof in the whole case. I want to know if you have any objection to the postponement of the hearings until Monday?

Mr. Ransom: I do think it is too long a time in view of the financial situation of this company.

The Master: How long a time would you consent to?

Mr. Ransom: I will consent to an adjournment until the day after to-morrow morning.

The Master: I shall adjourn it until ten 4574
o'clock Friday morning.

Mr. O'Brien: I think I ought to be heard here, your Honor. I don't know whether counsel wants to go on record as offering that as a measure of what he thinks is fair play to the defendants' case and the consumers of this company.

The Master: Mr. O'Brien, this has to do only with one point.

Mr. O'Brien: I understand what it has to do with, your Honor.

The Master: Namely, this one book.

Mr. O'Brien: They have spent days prepar- 4575
ing a brief on a legal question. They come in here out of a clear sky and ask you to take the dictum of the witness that all these books are correct because he has gone through them or has had some one O. K. them. I say that is an outlandish proposition of law, and he knows he has got to present more proof than that. I say it being such a vital matter in this case,

4576 involving not only an examination of the record itself, which mere cursory perusal would take three or four days, and involving so many vital questions of law, we ought to have a week.

The Master: I won't give you a week.

Mr. O'Brien: Then you can go on record. I won't plead for anything. I stand on my rights. I do not want any courtesies in this case, but I insist on us having a week's time to go into the matter.

Mr. Ransom: I will consent, in behalf of the complainant, to the adjournment of this case

4577 until Monday morning, with the understanding that the arrangement for the holding of 6 hours a day will be correspondingly extended as to the week following.

The Master: No, I won't do that, I find it is entirely too burdensome on the Master to run six hours a day. I have set aside this week and next week, and I am going to stick to that resolution, but I will not do it beyond that, it is entirely too much.

Mr. Ransom: Well, the books go back to the office during that time, and the defendants will have the same opportunity to examine them as

4578 they have had since the 10th of February?

Mr. Hayward: You ought to put in there what books you are going to offer.

Mr. O'Brien: I am not going to go up there and examine them. I will ask that these books be delivered to my office.

The Master: No, we can't do that.

Mr. Chambers: There isn't any proof tha

they have been available since the 10th of 4579
February.

The Master: I don't care anything about that. What I want to get clear is. Is this the book that is offered in evidence?

Mr. Ransom: Yes, and others are going to be.

The Master: But I am talking about this one book which brings up the question as to the mode of proof. Judge Ransom takes the position that this book, being a book of account, a general regular book of account in daily use, is evidence of its entries, and has probative 4580
force as to moneys expended and transactions which appear current for the year 1918. Now, I want to allow the fullest opportunity to analyze this book, to the end that counsel may present every phase of objection to the admissibility of this book in evidence from a legal standpoint, in view of the things in it, and likewise, to give him the fullest opportunity to cross-examine the witness with reference to this book for the purpose of supporting any objection, or any anticipation of an objection, and when that is done and we have threshed out the law as to the mode of proof as to the power 4581
of the Master to permit a book of this kind, we will then have a general line of conduct with reference to other books, which, as they present the same general situation, will carry themselves under the same rule.

Mr. O'Brien: Well, I don't know——

Mr. Ransom: May I say a word on that?

The Master: Yes.

4582 Mr. Ransom: If we are going to take an adjournment for that purpose, I suggest first that I indicate to your Honor but one book out of a whole system, it does not really quite present the question in the form which it ought to be presented. If we are going to take an adjournment for that purpose, I would like to mark or make an offer of each of them on the record at this time, so that they may all be subject to examination during that intermediate period.

Mr. O'Brien: Then we should have more
4583 time.

The Master: Then I should be inclined to give the other side a little more time.

Mr. O'Brien: well, there isn't any slave-driver ever drove me, and they won't drive me while I am in this case.

The Master: If they have got to examine a large number of books, I should be inclined perhaps to give them additional time.

Mr. Ransom: Well, I think if we start and stop with two days' holding, or three days a week, and then a few days for examination of a book, why, we will never get through.

4584 Mr. Hayward: Of course, that is on the theory only your Honor, that this book may clear up the situation pretty generally as to other books, and by taking these two days' stop now——

The Master: What is this called, the operating ledger?

The Witness: Yes, sir, the operating ledger, section A.

Mr. Ransom: I am going to make an offer 4585
of the other books at this time, if your Honor will permit me. One book really does not present the matter.

Mr. O'Brien: Your Honor, this book will present a whole lot of other questions here. Here you have accounts with all of these other affiliated companies, and they are really carbon copies, they cover work of the subcontractors, and there is a lot of questions therefore. It involves, apparently, the accuracy of records between the people that are not parties to this suit. Now, it may present a lot of other 4586
questions and we could not hear them, and we could not without going into them state what the questions will be, so that a decision might abide—a decision rendered as to the admissibility of the first book offered would govern or control the other books.

The Master: I said except where a different situation was presented.

Mr. O'Brien: You will notice here, your Honor, the Astoria Light, Heat and Power Company, the Westchester Lighting Company. You see here it involves questions as to the various collectors; subscriptions to the Gas 4587
Age, $30, and various things of that kind. Now, that has got to be gone over, because here you have got the very vitals of the case, and I suggest that an adjournment be taken at least until Monday and hear us with regard to the exhibits just offered on Monday, and let the rest take care of itself. We can't tell until such books are offered.

4588 The Master: He suggests that he offer the rest of the books, and I suggest that he offer all that he wants to offer.

Mr. Ransom: I want to make an offer of all of these books at this time. May I do it?

Mr. Chambers: If your Honor please, this first book has the restaurant in there, for instance?

Mr. Ransom: May I make an offer now? I can identify them all in the next fifteen minutes.

The Master: Well, go ahead, mark them all for identification, first.

4589 Mr. Ransom: All right.

The Master. This book has been marked for identification?

The Witness: It has, your Honor, yes.

The Master. Now, has that other book been marked for identification?

The Witness: Two books were marked.

Mr. Ransom: I ask to have marked for identification the book operating Ledger B Consolidated Gas Company, 1918.

The book was then marked Complainant's Exhibit 190, for Identification.

4590 Mr. Ransom: The operating journal for 1918, Consolidated Gas Company of New York?

The book was then marked Complainant's Exhibit 191, for Identification.

Mr. Ransom: Sundry debtors blotter 16, Consolidated Gas Company.

The book was marked Complainant's Exhibit 192, for Identification.

Mr. Ransom: Sundry debtors blotter 47, 4591
Consolidated Gas Company.

The book was then marked Complainant's Exhibit 193, for Identification.

Mr. Ransom: Sundry debtors' blotter 49, Consolidated Gas Company.

Marked Complainant's Exhibit 194, for Identification.

Mr. Ransom: The book marked Sundry Creditors Ledger No. 17 Consolidated Gas Company for the year 1918.

Marked Complainant's Exhibit 195, for Identification.

Mr. Ransom: Sundry Debtors Ledger No. 7, 4592
Consolidated Gas Company of New York.

Marked Complainant's Exhibit 196, for Identification.

Mr. Ransom: The index accompanying the same.

Marked Complainant's Exhibit 197, for Identification.

Mr. Ransom: The book 1918 invoices approved by the executive committee No. 28.

Marked Complainant's Exhibit 198, for Identification.

Mr. Ransom: Treasurer's cash No. 32, Con- 4593
solidated Gas Company.

Marked Complainant's Exhibit 199, for Identification.

Mr. Ransom: Treasurer's cash No. 33, Consolidated Gas Company.

Marked Complainant's Exhibit No. 200, for Identification.

4594 By Mr. Ransom:

Q. Have we introduced here the book called payroll summaries?

A. We apparently have not.

Mr. Ransom: The payroll summaries is not here, but it will be here at the next session.

The Master: You can't mark it if it is not here.

Mr. Ransom: No, I simply referred to that, because it is part of the system.

The Master: Have you marked all the books you have here?

4595 The Witness: Yes.

The Master: What are the numbers for identification of those numbers that you are now offering?

The Stenographer: Exhibit 188 to 200, both inclusive.

The Master: Judge Ransom offers the books just offered for identification, books 188 to 200 both inclusive.

Mr. Ransom: And I give notice that I shall also offer at the next session the pay roll summaries, which is another book which by mistake has been left in the office of the Company

4596 to-day. I have not offered to-day the general journal or the general ledger, I think it is called, which are books of secondary entries; that is, books that carry over in certain form data which is contained in these books. They are equally available to the defendant company, but I do not think they are necessary in evidence here.

The Master: Now, by consent of counsel, this proceeding is adjourned until Monday morning, the 18th inst., at ten A. M., and it is

the understanding of the Master that exhibits 4597
for identification 188 to 200, will be placed at the disposal of counsel, with the fullest access to all other books or records, documents or vouchers between now and Monday morning.

Mr. Ransom: There are rooms on the 17th floor where these books have been on examination.

The Master: Mr. Brundage is in charge of the books, isn't he?

Mr. Ransom: Yes, and Mr. Davidson under him.

The Master: Well, it will be understood that 4598
Mr. Brundage is the man to whom application shall be made for space and authority to look at these books.

Mr. Ransom: May I say there is no need of any application, they will simply go to the room on the 17th floor where Mr. Davidson is in the adjoining room.

The Master: What room, you say?

The Witness: 1740.

The Master: Then it is understood these books will be in room 1740.

The Witness: I will have them there at nine 4599
o'clock to-morrow morning.

The Master: Or subject to call by Mr. Davidson, who is in that room, and who will get them?

The Witness: Yes, sir.

The Master: It is the understanding that Monday morning at ten o'clock counsel will be prepared to proceed with the cross-examination of Mr. Brundage, and also to present any oppo-

4600 sition to the admission of these books in evidence; is that correct?

Mr. Hayward: Yes.

Mr. Ransom: It is understood also that the vouchers and all underlying data will be available during that time?

Mr. O'Brien: You need not do that at all. I will not go into the underlying data.

The Master: That I have already stated. I have brought out from Judge Ransom that these books are only offered in so far as they contain current items.

4601 Mr. Ransom: The 1918 account.

The Master: And accounts carried over from the previous year from another book.

Mr. Chambers: Of course, I do not think the time is quite long enough, but we will try it.

The Master: Well, I have been trying, so far as possible to dispose of these matters by agreement, and the minute when Mr. O'Brien said, when I got him to say let it go until Monday morning, I thought I had a pretty good agreement, that I grabbed quick.

4602 Mr. O'Brien: But, your Honor, I had insisted on a week.

The Master: Yes, but as soon as you agreed to Monday, I grabbed it.

Hearing adjourned until Monday, August 18, 1919, at ten A. M.

Complainant's last exhibit No. 200.
Defendant's last exhibit T.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 4603

Before Abraham S. Gilbert, Special Master.

New York, August 18, 1919.

Met pursuant to adjournment.

Present: Mr. Ransom, Mr. Vilas, Mr. Goetz, of Counsel for Complainant
Mr. Chambers, of Counsel for defendant Newton
Mr. Hayward and Mr. Clark, of Counsel for Public Service Commission 4604
Mr. O'Brien, of Counsel for defendant Swann.

Mr. Hayward: If the Court please, I have another engagement a little later, and while we are waiting for Judge Ransom's witness, it won't take me but two or three minutes, and I will say very frankly to the Court that I have not changed my opinion one iota after two or three days' investigation of the law in this case. 4605
As stated the other day, we haven't here what is essential for any offer of this kind. Now, the crux of the whole thing, of course, you can go back to the books of evidence, Greenleaf or Wigmore or anywhere else, and get the original theory of what a book of original entry is. I don't know what my associates will agree in this thing, but my opinion is that tabulations

4606 and summarizations in rate cases will become necessary before we get through with this case, if the Master please, but these books, referring particularly to the first book that was offered, which we have given most of our attention to, is neither one thing or the other. That is not a book of original entry, it is plainly apparent, coming within the old rules of evidence that we all learned in the law school. Neither is it a tabulation nor a summarization of books of original entry or original documents like the time sheet, like thain cards and train sheets, such as are referred to in the case Judge
4607 Ransom has there. It is neither fish, flesh nor fowl. It is not a tabulation made by a man who is present in Court, of whom we can ask questions and say, where did you get the summary in column 3. Well, the answer would be, "I got it from books A, B and C". Are they here? Either they would be in the court room actually or constructively in the court room, if available, and it seems to me that on no theory of evidence can this book be offered. It is not a book—it cannot be offered as a book of original entry because plainly it is not. It cannot be offered as a summary or tabulation, because
4608 the man on the witness stand, who is the only man who has given us any information about it, did not make the tabulation, and there is no personal knowledge of the entries or the documents in there,—the books or files or slips from which it was compiled. We have prepared a memorandum which has been handed to your Honor, and a copy of which I have for Mr. Ransom.

The Master: I have read it.

Mr. Hayward: And it seems to me that shows 4609
clearly the distinction between any of the cases that Judge Ransom has referred to in his little memorandum and his present offer.

Now, before I go, in fairness to Judge Ransom and to the Master, if it shall be said here that, as a precedent, the Public Service Commission, either I myself when a Public Service Commissioner, or the other members of the First District or the up-state Commission, have in rate cases taken tabulations, summarizations, and so forth in tabulated form, that fact is true, your Honor. I want you to bear in mind, however, if you are going to consider 4610
that as a precedent, two things. In the first place, never was any evidence that I have any knowledge of taken in a form as submitted here in this case in this book. Secondly, we did take tabulations, no doubt about it, and I think that they are admissible when properly brought and properly identified with a proper opportunity to opposing counsel to go to the original source of the tabulations. But beyond all that, nothing that the Public Service Commission has done in either of the districts can be used as a precedent in this case, because by Section 20, which the Master may or may 4611
not be familiar with, of the Public Service Commission Law, the rules of evidence are expressly abolished. It expressly states in that statute that the Commission need not adhere to the technical rules of evidence, and in this case the State Legislature has not abolished the rules of evidence, but Judge Ransom is himself trying to. That is the idea.

The Master: Well, with reference to the

4612 practice of the Public Service Commission, I was not familiar with Section 20 of the Public Service Law.

Mr. Hayward: That expressly provides——

The Master: (Interrupting) But I have reached the conclusion in my own mind that that was not a precedent that I ought to follow, because I felt that a public Service Commission would probably have more leeway than a court.

Mr. Hayward: Your Honor, I initiated these cases, I started a rate case myself up there on my own motion, without complaint, in one or

4613 two cases, if I am not mistaken, but Section 20 says in this language, That the Commission or Commissioners sitting in rate cases, and I guess in other cases, shall not be required or it is not necessary, something like that, to adhere to the technical rules of evidence.

The Master: Well, I can see the reason for that.

Mr. Ransom: May I say a word?

Mr. O'Brien: Before we get into this discussion, may I say that I have—I would like to ask your Honor to defer any further discussion until we are through with the wit-

4614 ness.

The Master: Well, I had intended only to take Col. Hayward's statement, because he was anxious to get away.

Mr. O'Brien: I prefer not to have the matter discussed until we get the record complete.

The Master: And while he was here, so that all the counsel might understand my view of it so far as one angle of it was concerned, I have reached the conclusion on reading Judge

Ransom's memorandum and thinking about it, 4614
that the practice in the Public Service Commission probably was not a good precedent for me to follow, and when I reach a conclusion here it will be with respect of what I believe to be the development of the law.

Mr. Hayward: By the Courts?

The Master: By the Courts; and the development, if there has been any, of the strict rule of books of original entry, and as to just what books are books of original entry within the meaning of the later cases. But I am not going to do anything about it until you are through with the cross-examination. 4616

Mr. Hayward: The Public Service Commission does let down the bars perhaps because of the peculiar nature of their dual capacities, trying individually and as in a way both for the consumers and in some cases for the companies, but aside from all that, and beyond all that is this section I have expressly referred your Honor to, which would make any act that they have taken absolutely useless.

The Master: I agree with you on that, irrespective of the section. I think this has to be decided with respect to what the state of the law is as to the procedure to be followed in 4617
litigation in rate cases, and I think generally as to general litigation presenting peculiar situations. That is all there is about it.

Mr. Ransom: May I just say one word on on what Col. Hayward has said, which I think is not plain, what I understand to be the rule with respect to the commission? The Public Service Law is that the commission shall not be bound by the technical rules of evidence.

4618 Now, it has been the ruling of both commissions, so far as I am familiar with it, not that that repeals all the rules of evidence, and that they are as a body bound by none of the rules of evidence with which Col. Hayward and your Honor have been familiar. That has never been done in any instances with which I am familiar. The construction which has generally been given to that provision by both commissions, so far as I know it, and by the courts in construing the public service law and in construing the somewhat similar provision, or I think the identical provision, contained in
4619 the Workmen's Compensation Law with respect to procedure under that Act, is that what we may call the fundamentals of evidence and evidentiary procedure are observed and should be observed by the commission, but that the mere technicalities of evidence need not be followed. I don't think, of course, that the procedure before a Commission is entirely controlling upon your Honor here; yet this is the equity side of this Court, and it has often been indicated that the technicalities of evidence are not binding upon a Master on this side of the Court, because of the provisions of Section
4620 62 of the Equity Rules, which specifically give the Master full and untrammeled authority as to the mode in which matters requiring evidence shall be proved. Now, what the Public Service Commission has done, or both commissions, throughout their history, has been this; they have not even the books—I cannot recall now any case before the Commission, in which the books have been produced, but they have

taken and invariably taken tabulations of the books, and then access to the books has been freely allowed to all the appearing parties, and of course, the Commission has it anyway, under its general regulatory power. 4621

Mr. Hayward: Bearing in mind, always, that the person who brought the tabulation or the summary was on the witness stand and offered them, and the sources from which they were made were either available in Court or available elsewhere, but constructively in Court, and that he had personal knowledge of the tabulations and of the data therein contained. You don't think that is a parallel case to the books here, do you? 4622

Mr. Ransom: I think the practice which has been followed in that connection, the authority for doing this, taking Mr. Teele, or whatever accountant we employed and having him make a tabulation from the books, and then allowing the books,——

Mr. Hayward: From what books?

Mr. Ransom: From these books.

Mr. Hayward: Which you are now offering?

Mr. Ransom: Yes.

Mr. Hayward: Not at all.

The Master: One at a time now.

Mr. Ransom: Now, we felt that we have done the thing which carries it a step farther, we are offering the books from which, under the precedent, the tabulations are originally made, are entirely made up—— 4623

Mr. Hayward: No, I beg your pardon, Judge.

Mr. Ransom: I have never known of any instance of a case where the source of entry was

4624 required, when the tabulations were made up from the books. Of course, if the tabulations of the books are admissible, certainly the books themselves are.

Mr. Hayward: The broken link in Judge Ransom's chain, if the Master please, is that no tabulations from these books would ever be admissible because these books that he has offered themselves are not admissible. But tabulations made from books of original entry might be admissible. In other words, this book is neither a tabulation of books of original entry, nor is it the book itself. Is my point

4625 clear on that?

The Master: Yes, it all turns on the point whether these books are books of original entry.

Mr. Hayward: Yes, and if they are not, then tabulations made from them are not admissible.

Mr. O'Brien: Your Honor, I think the argument would be much clearer by the testimony brought out from the books.

Mr. Hayward: If the Master will excuse me I will run along. That is all I have to say on the subject.

4626 (Mr. Hayward withdraws.)

The Master: Are you in shape to proceed with the cross-examination of the witness? I do not see the books here.

Mr. Ransom: The books left 15th Street before the witness.

The Master: I suppose we better wait for the books.

Mr. Ransom: There are some things, I take it, they better ask aside from the books.

Mr. O'Brien: Not yet. Your Honor, I beg

to suggest that in view of the conditions that 4627
we have prevailing this morning in the City, occasioned by the strike of the employees of the Interborough Railway Company, things will be chaotic while that strike is on and it would be a wise thing to take an adjournment until the strike was settled.

The Master: When will it be settled?

Mr. O'Brien: That is problematical.

The Master: That is the problem about adjourning. If I thought the strike would be settled I would adjourn until tomorrow; if I thought it would be settled by the day after tomorrow I would take an adjournment until 4628
Wednesday.

Mr. O'Brien: The point is that while today the complainant has delayed the trial, tomorrow it be some one of the defendants. We may be held up, and we all want to be here. Things are so mixed up it is pretty hard to make any plans, and I think it would be a wise thing to take an adjournment, a reasonable adjournment until things have settled.

The Master: I have been thinking about it, Mr. O'Brien. If we can finish up with this witness and the books get here let us do that anyhow. We will see how it works out. Where is 4629
Mr. Chambers this morning?

Mr. O'Brien: Mr. Chambers is not here. We will need every angle of the defendant's case presented, and I do not want to proceed without him. Having waited so far for the complainant's books we will have to wait for Mr. Chambers to be here.

Mr. Goetz: We had the same trouble in the Brooklyn strike and it cleared up in three days.

4630

At 11:50 A. M.

The Master: Owing to the absence of Mr. Chambers, Deputy Attorney General, for whom we have now waited from ten o'clock until ten minutes to twelve, and who, undoubtedly, has been delayed because of the upset of transportation facilities due to the strike, I shall adjourn the matter now until two o'clock.

Mr. O'Brien: I will note on the record that we waited for the records and the complainant for a time.

4631 The Master: It may be noted that we waited half or three-quarters of an hour for the records to come down, which were likewise delayed because of the strike.

Recess until two P. M.

AFTERNOON SESSION

HENRY M. BRUNDAGE resumed the stand.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

4632 Mr. O'Brien: I may say, your Honor, as preliminary explanation of some of the questions that I am going to ask, that they go not only to the method of keeping the books, but also to the substance of the things purporting to be transcribed in the books, and while at times I may overlap one thing or another, I will endeavor not to repeat matters that may relate to the same point.

The Master: The only request I have to make 4633
is that when you have made your point, that we stop.

Mr. O'Brien: Yes.

The Master: Because if you make your point on one case, it doesn't add anything to the point to have it on forty cases.

Mr. Ransom: There are two questions, it seems to me. One is the question of admissibility of the books; the other is the question of substance. I raise a very serious question whether in advance of the determination of the admissibility of the books, it is desired to go 4634
fully into the matter of substance in the books.

The Master: I will see what Mr. O'Brien has in mind. If Mr. O'Brien is able to show on cross-examination that this book is not at all reliable, I would have to rule it out.

Mr. O'Brien: Our objection is that this evidence is incompetent, irrelevant and immaterial.

Mr. Ransom: I really call your attention at this time to the consequences of going into matters of substance, if Mr. O'Brien wishes to proceed. 4635

The Master: Well, we will see. Now, Mr. O'Brien, will you have in mind that you are talking away from the stenographer?

Mr. O'Brien: Yes, I will.

By Mr. O'Brien:

Q. Mr. Brundage, I call your attention to page 336, and ask you if this part of the book covers loans?

4636 A. Page 336 records certain loans made by the company.

Q. And there appears to be a balance in the Reardon account of $20,000?

A. There does.

Q. And $5,000 in the account of the loan to Gas Companys' Empire Mutual Aid Society?

A. Employees' Mutual Aid Society, counsellor—Gas Company's Employees' Mutual Aid Society.

Q. Yes?

A. A balance of $5,000 at the end of 1918.

Q. And there is nothing in the credit side of their
4637 account, is there?

A. There is not.

Q. And at page 337, you have an accrued account United States Government Fourth Liberty Loan, 4¼%?

A. Accrued interest on the two Government loans to which you refer.

Q. And that account is not balanced, is it?

A. There were balances due at the end of the year.

Q. Well, I am asking you whether the account is balanced?

A. There is a balance yet outstanding at the end
4638 of the year, counsellor.

Q. Yes?

Mr. Chambers: Is that account balanced?

Q. It means then that this account is not balanced?

A. It means that that is the balance at the end of the year, and is carried forward to the account of the next year.

Mr. Chambers: Well, then, it is balanced?

The Witness: I should so consider it.

Q. You don't know the handwriting of this man? 4639

A. Yes, I can identify that handwriting. That handwriting is in the handwriting of a man by the name of Lane.

Q. Have you been over these books since you were last on the stand?

A. Subsequently to our last conference, I made it a point to look up the handwritings that I was unable to identify on Wednesday last.

Q. And did you go through the books too?

A. I did not.

Q. You had to look at the handwritings, didn't you?

4640

A. No, sir; I had only to look at one page.

Q. Do you mean by that that there is only one handwriting here?

A. The other day I was unable to identify two handwritings, and I made it a point to find out whose handwritings they were.

Q. I call your attention to page 335, and ask you whose handwriting that account is kept in, the National City Company Loan account?

A. The heading and the balance carried forward from the previous year is in the handwriting of a man by the name of Ganung.

Q. Is he still with the company? 4641

A. He is.

Q. And the other entries are made in whose handwriting?

A. June and July are in the handwriting of a man by the name of Reynolds; the October entries are in the handwriting of a man by the name of Lane.

4642 Q. Both Reynolds and Lane are still with the Company.

A. Yes.

Q. And this shows $1,500,000, does it, balance?

A. It does.

Q. Does that mean a loan to the National City Company?

A. It does.

Q. I call your attention to page 365. What is the name of that account?

A. General Suspense Miscellaneous.

Q. Does that differ from any other general sus-
4643 pense accounts in this book or any other book of account offered for identification?

A. There are several general suspense accounts in that ledger.

Q. In what respect does this differ from the others?

A. The others are particularly identified, so that we may put our fingers on what we want, when we want it. These are miscellaneous items of various kinds.

Q. How is one to tell whether a certain account or an item was to go in one or the other accounts?

A. From the nature of the charge.

4644 Q. Is there any index or any statement in any of the several books marked for identification at our last session which will show how the differentiation is made, into either of the general suspense accounts?

A. There is. The title of the account alone identifies it, counsellor.

Q. For whom? You mean for yourself?

A. For any accountant.

Q. Will you explain what you mean when you say 4645
the title explains it.

A. I will. I call your attention to the very opposite page before me, page 364. Here is an account, "Plant withdrawn from service suspense." The title indicates that there is charged in that account the losses imposed upon the company representing the value of plant withdrawn from service, which is carried in this account.

Q. Then you have another suspense account that has a specific name; is that what we are to understand?

A. Yes, sir.

Q. Then you have a third account entitled, "Miscellaneous", which takes everything that you would not include in the other two accounts? 4646

A. Correct.

Q. This miscellaneous account covers many different kinds of items?

A. It does.

Q. Is there anything to indicate in these books marked for identification just why they are put in a miscellaneous account, beyond what you have already said?

A. Oh, yes. The journal entries or sundry creditors' bills in which the charges were made would 4647
indicate that.

Q. What?

A. The journal entries or the sundry creditors' vouchers from which these postings were made would indicate what account they were to go to.

Q. You would have to refer to the account in the sundry entry journal to find out what they were and why they were put in this account?

4648 A. Counsellor, this account is posted from the journal or sundry creditors' voucher, and when the bookkeeper has that record before him he knows at once where to charge it.

Q. I am talking not so much about the bookkeepers but others who are called upon to inspect your books.

A. The same thought would apply.

Q. The first column on page 365 is a column of dates, is it not?

A. Yes, it is.

Q. There are several dates here which refer ap-
4649 parently to the previous December, are there not?

A. Yes.

Q. The first entry is 12/31?

A. Right.

Q. The next one is 12/29?

A. Yes.

Q. Further down the column you have Fowler Manufacturing Company, 12/31?

A. Yes.

Q. And further down the Baltimore Gas Appliance Lighting Company 11/28?

A. Yes.

Q. And the next one 12/5?

4650 A. Yes.

Q. And the next one 12/1?

A. Yes.

Q. And the next one 12/7?

A. Yes.

Q. And the next 12/21, and so on?

A. Yes.

Q. There are numerous items of that kind on this particular page?

A. There are. 4651

Q. At the top of the page there is a balance with the notation 12/31 of 1917?

A. Yes.

Q. I call your attention to page 1119 of this same operating ledger A and ask you what is the title of the account?

A. Fire Insurance Participation Reserve.

Q. And that shows a balance of $556,498.31?

A. It does.

Q. In whose handwriting is it, if you know; or do you know the handwriting of that account?

A. The caption of the account and the balance 4652
is in the handwriting of Ganung and the subsequent entries in the handwriting of Lane.

Q. Both with the company?

A. Yes.

Q. At the present time?

A. Yes.

Q. You know something about that account, do you?

A. What do you wish to know about it, counsellor?

Q. Do you know anything about it?

A. I do.

Q. Do you know the nature of it? 4653

A. I do.

Q. Do you know how long it has been carried?

A. Approximately.

Q. Is it an insurance fund that covers the complainant and the affiliated companies—self-insurance?

A. It covers only the Consolidated Gas Company.

4654 Q. Why is the word "participation" in the title?

A. Because of the fact that it represents a reserve, the corresponding asset for which is an insurance participation certificate.

Q. If the complainant is the only one who participates in this insurance, why do you embody that term in the title of the account?

A. We identify it on the assets side by the term "insurance participation certificate"; and the liability side by insurance participation reserve.

Q. Well, that does not answer my question.

4655 A. I don't know why not.

Q. I am asking you as an accountant why do you use the term "participation"?

A. The assets, counsellor, to which I have referred is represented by a participation certificate in the excess of earned premiums over losses, or *vice versa*, as the case may be, and this certificate is called an insurance participation certificate.

The Master: Who issues it?

The Witness: The fire insurance trustees fund.

Q. What do you understand ordinarily by the term "participation"?

4656 The Master: I don't care about that, what we want to know is what this participation is. As I understand it there are trustees of the fire insurance fund?

The Witness: There are.

The Master: Is that made up of trustees of various insurance companies?

The Witness: That is made up by trustees

who undertake to insure the company against 4657
fire losses.

The Master: What is the idea, what is the scheme? Can you tell us more about it so as to make the term "participation" more clear?

The Witness: Probably, your Honor, a submission of the insurance trustees agreement would be the best evidence to answer the question in detail, such being a matter of record with the Public Service Commission?

The Master: What I want to get at is, is there some scheme whereby various of the companies, gas companies, have combined in a 4658
method to insure themselves?

The Witness: Yes, sir.

The Master: And they contribute to an insurance fund?

The Witness: The gas companies who are insured in the agreement pay to the trustees the premiums upon the amount of property that they wish insured, and at the end of the year any excess of the insurance trustees' revenue over losses is retained by the trustees, they issuing what are known as "participation certificates" to the companies who pay the premiums *pro rata;* and as those certificates 4659
reach us we record an entry in our books of account charging insurance participation certificates and crediting this reserve.

Q. Then the word "participation" is used because the complainant participates in this insurance scheme or plan with other companies?

A. Yes, this representing the Consolidated's portion only.

4660 Q. Is this money that is paid into a common pool for the purpose of insuring the complainant and other companies?

A. This money represents, as I have explained to you, the excess of the premiums paid to the trustees' fund in excess of the losses sustained by them.

The Master: Well, it is money paid in by this and other gas companies to a fund, that is, what is left of it?

The Witness: No, this is our portion of what is left.

Q. Do you know the companies that participate with the complainant in this scheme?

4661 A. I would not attempt to give them to you from memory.

Q. I am testing your memory as well as your other faculties as an accountant.

A. And your question is?

Q. What you know about this.

The Master: Can you give me the names of all the companies?

The Witness: I can say in a broad way that all of the affiliated gas and electric companies are in this fire insurance fund. I cannot give you the names individually.

4662 Q. Are there any other companies than those that we are to understand as the affiliated companies?

A. Not that I recall.

Q. What do you understand to be the affiliated companies, now that we are using that term?

A. I refer to the companies who are affiliated with the Consolidated Gas Company through stock ownership.

By the Master: 4663

Q. You mean the Standard?

A. Yes.

Q. And the Mutual?

A. Yes, the Mutual, the New Amsterdam, the Central Union, the Northern Union, the Queens Company, and others.

By Mr. O'Brien:

Q. The Westchester?

A. Yes, sir, Westchester Lighting Company.

Q. Astoria Light, Heat & Power?

A. Astoria Light, Heat & Power.

Q. The New Rochelle? 4664

A. There is no such company—the Northern Westchester Lighting Company.

By Mr. Chambers:

Q. And Tarrytown?

A. There is no such Company,—Peekskill Lighting & Railroad Company.

The Master: The New York Edison Company?

The Witness: The New York Edison and the Yonkers Electric Light & Power Company?

By Mr. Chambers:

Q. The National Coal & Coke Company?

A. Yes, and United Electric Light & Power Com- 4665 pany.

Mr. Goetz: There may be others.

Mr. O'Brien: Well, he doesn't say there are others. I have asked him for all of them, if he could give them all. Have you given them all?

The Witness: I said I gave you all I could think of.

4666 Q. Your counsel has just prompted you by saying it is not all.

Mr. Goetz: I am not prompting him. I am advising the Court.

Mr. O'Brien: Are you advising the Court?

Mr. Goetz: There are others.

Mr. O'Brien: I will ask counsel what they are.

The Master: We will not have the counsel state it. We will have the plan, which is apparently a written or printed document.

The Witness: It is, your Honor.

4667 Mr. Ransom: I produce it.

The Master: Counsel for complainant produces a paper entitled "Insurance Agreement"——

Mr. O'Brien: I didn't ask him that. I asked him what he understood by affiliated companies.

The Master: Consolidated Gas Company of New York and others with Harrison E. Gawtry, and others, trustees, Insurance Agreement dated September 15, 1902, revised to May 1, 1916. Is that the paper you have reference to?

4668 The Witness: That is the paper I referred to.

Mr. Ransom: As a matter of fact, there are several companies outside the Consolidated System.

Mr. O'Brien: I do not want the record to be confused. I have asked about affiliated companies; not the ones in the insurance, but what we have been referring to right along as the affiliated companies.

The Master: Just tell us what companies are 4669
in this insurance pool.

The Witness: I read from a copy of the agreement: Consolidated Gas Company of New York; New Amsterdam Gas Company; Standard Gas Light Company of New York; The New York Mutual Gas Light Company; Central Union Gas Company; Northern Union Gas Company; New York Edison Company; United Electric Light & Power Company; The Edison Electric Illuminating Company of Brooklyn; The Brush Electric Illuminating Company of New York. 4670

Mr. Ransom: May I just say on that, that apparently as of a later date there are other companies in the pool. I call the attention of the witness to page 49 of this document as of May 1, 1916.

Mr. Chambers: A pool, did you say?

Mr. Ransom: Whatever you may call it, an insurance fund.

Mr. Chambers: Well, pool, you used that. All right.

The Master: Are there any others that you have not mentioned, that appear at page 49?

The Witness: The Astoria Light, Heat & 4671
Power Company;
The Northern Westchester Lighting Company;
The National Coal & Coke Company;
The Peekskill Lighting & Railroad Company;
The Westchester Lighting Company;

4672 The Yonkers Electric Light & Power Company;
The New York & Queens Gas Company;
The New York & Queens Electric Light & Power Company;
The Kings County Electric Light & Power Company;
The Municipal Lighting Company, Incorporated.

The Master: Now you have got them, all, have you?

Mr. Ransom: As of that date.

4673 The Master: That is, as of May 1, 1916?

The Witness: Yes, whatever the record shows there, your Honor.

The Master: Go ahead, Mr. O'Brien:

By Mr. O'Brien:

Q. I call your attention to page 366, and ask you if there are not entries there, garaging, Standard Company cars; Mutual Company cars; New Amsterdam Company cars; Edison Company cars—there are such items there?

A. There are such credit items in this account.

Q. In whose handwriting is it?

A. That is in the handwriting of Reynolds.

4674 Q. And there are entries on page 365 of payments to Sherman and Sterling?

A. I find two there.

Q. And the Standard Gas Light Company are noted in the debit column for a small amount 111th street Disp. What does that mean?

A. 111th street Dispensary, a debit item I find, in January, 1918, $15.19.

Q. I call your attention to page 113, and ask 4675
you if that is not an account without a title?

A. It is not; it has a very specific title. Services.

Q. You take that to refer to the device or the piece of equipment called service?

A. It is the gas service, sir, a term well known in gas accounting and gas practice. It is the pipe that runs from the street main through the street to the consumers' premises and known as the service.

Q. Well, did you take this account to apply to that?

A. I do. I don't take it, it is so. 4676

Q. Well, is this an account that relates to the service generally of the complainant?

A. This is the asset account in which is charged the cost of laying the consumer's service from the street main to his party wall, and in the case of our company, three feet inside the party wall.

Q. You have certain items here in red ink opposite the words "sundry debtors $64.29", that is under labor, and other material $11.08?

A. Yes.

Q. Will you tell me what the cause of those items is?

A. Yes, sir, that comes through the sundry 4677
debtors' blotter, and represents amounts charged to somebody and credited to this account.

Q. Is that one of the books marked for identification?

A. It is.

Q. And from what record or book does it come into the sundry debtors' account?

A. It comes to the sundry debtors from the street

4678 department, which has jurisdiction over the street work.

Q. Will you take the particular book referred to and trace that to its source?

A. Yes. Give me the first sundry debtor blotter, 1918.

Mr. Ransom: Exhibit 192 for Identification, I think it is. The low number of the two.

The Witness: It is in the month of January, 1918. Now, there are a hundred of these charge accounts, it may take me a few minutes to look it up, but I will find it for you.

4679 Q. Are you looking for page 72 of that book?

A. No, sir, I am not.

Q. Isn't that the page that is indicated here in the operating ledger?

A. That is a journal entry, the page that you have reference to, sir. That journal is made up from this detailed record that I have before me, and this detailed record shows the credits to the different accounts.

Q. Then it goes from the sundry debtors into the journal, and from the journal into this book?

A. Yes, sir.

The Master: Can we get it quicker by getting

4680 the journal entry?

The Witness: No, sir, the journal simply runs by the month, your Honor. What is that amount?

Q. $64.92 for labor, $11.08 for material.

A. Here is the item of $11.08 credited to the services material.

The Master: What page?

The Witness: Folio 478 of sundry debtors blotter No. 46.

The Master: Read it. 4681

The Witness: A charge to the New Amsterdam Gas Company for service of this company transferred to your names, as follows: Through service in old pavement at No. 930 Eighth Avenue a one and one-half inch service, $20,-65, of which $11.08 is credited to services material, and $9.57 to services labor.

Q. And that is a typewritten record you are reading from in the book sundry debtors?

A. This is a carbon of the——

Q. I asked you if it was not a typewritten record, isn't that correct? 4682

A. It is a duplicate, a carbon copy of a typewritten record, counsellor.

Q. Yes, and in a book called sundry debtors, is it?

A. Sundry debtors No. 46.

Q. And what is the date opposite the entry? No, I didn't say that, I said opposite the entry? What is the date?

A. This date is November 30, 1917.

Q. Yes. Now——

The Master: What other date is there on it?

The Witness: The bill is dated January 22nd, 1918. 4683

The Master: The service was rendered in November?

The Witness: The transfer must have been made in November, but we did not get it through our accounting record, your Honor, until January 22, 1918. We wrote it——

Q. (Interrupting) From what source does this entry come into the book from which you just read it?

4684 A. This comes to us from a report prepared by the Street Department, which has jurisdiction over the mains and services.

Q. Well, it goes from this book into the journal, and from the journal into the operating ledger, from which we just got it?

A. It does.

Q. Now, you say it comes to this book sundry debtors, a report made by the street department?

A. I do.

Q. And is that in the form—are they kept in book form?

4685 A. No, it reaches us on a printed form.

Q. It reaches you on a printed form signed by the man who had charge of the work?

A. By the general superintendent of the street department.

Q. You haven't got that record in court?

A. No.

Q. Does this purport to be work on the mains of the New Amsterdam Company?

A. This purports to be a service heretofore belonging to the Consolidated Gas Company and transferred to the New Amsterdam Gas Company and billed in accordance with this entry to the New

4686 Amsterdam Gas Company.

Q. Formerly belonging to the New Amsterdam Company?

The Master: Formerly belonging to the Consolidated Company.

The Witness: Correct.

The Master: What occasioned a transfer of this kind, or what would occasion a transfer of this kind, Mr. Brundage?

The Witness: That would be a question that 4687
a street man could answer better than I could, your Honor.

Q. Is that the best information you can give as to the source the item in question comes into the sundry debtors' book?

A. I know nothing that I can say to add to that, counsellor. The record comes to the accounting department that a service has been transferred, to whom, address, and that leads to this bill to the New Amsterdam Gas Company.

Q. And you have got a service department, haven't you? 4688

A. A mains and service department, we call it.

Q. And they keep records there?

A. They keep records there, yes.

Q. They have their own records covering their own branch of this work?

A. Yes, as to what they have done in the field.

Q. And they have forms there?

A. Yes.

Q. Their reports are made every month?

A. Every month, yes, sir.

Q. And you assume it is on one of these reports that the information came in in due course?

A. I do not assume it, I know it. 4689

Q. Well, you don't know this particular item. You were speaking about the practice when you say you know.

A. I say that this entry could not have been made, counsellor, except upon——

Mr. O'Brien: (Interrupting) I move to strike out the witness's answer, your Honor.

The Master: No, I will take it.

4690 Mr. O'Brien: It is a bit of that infallibility that he has in his mind with respect to these books.

The Master: I think you brought it on yourself by your question.

Q. This is charged up in the operating ledger to the month of January, isn't it?

A. The items to which you have referred?

Q. Yes, sir.

A. No, sir; it is credited during the month of January, not charged.

Q. It is credited to whom?

A. Credited to the services account.

4691 Q. As of this particular month, January, 1918?

A. During the month of January, 1918.

Q. I am just going to divert a minute, Mr. Brundage. Referring to ledger B—this part of the same book, part of operating ledger A, an extension of it?

A. This is the second section of the same ledger; yes, sir.

Q. It does not differ in kind from the other?

A. It is all a part of one record, one book, kept in two books, as a matter of physical convenience.

The Master: Does it cover the same period of time?

4692 The Witness: Covers the year 1918; yes, your Honor.

Q. I call your attention to this account (indicating). Do you know the handwriting of the person who wrote this?

A. You are referring to that particular month?

Q. I am referring to the account first.

The Master: Referring to what page, Mr. O'Brien?

Mr. O'Brien: Page 935 of operating ledger B, being Exhibit 190, for Identification. 4693

Q. Do you recognize this handwriting in this account?

A. I do.

Q. Whose is it?

A. The month of January is kept by Reynolds; from February to August, inclusive, kept by Culver; the balance of the year kept by Lane.

Q. Is Culver still with you?

A. He is not.

Q. Where is he?

A. In Georgia the last time we heard from him. 4694

Q. I call your attention to the entry made here in January. State whether in the column entitled, "Voucher or Journal Entry No", there is any reference made to a voucher or a journal?

A. There is. Right where your finger is appears the words, "Br. 2", referring to Branch 2's payroll.

Q. The words, "Br. 2" you assume are referable to the Branch 2's payroll?

A. I do not assume it; I know it. Branch 2 refers to Branch 2 of the Commercial Department, and that is their payroll, as indicated in the written wording.

Q. And the mark "Overtime". The entry in question is opposite the term "Overtime"? 4695

A. It is.

Q. 123.39.

A. I so read it.

Q. And there is another item of 859.89, General Expense?

A. Yes.

4696 Q. And there is a third item "Trans. over ledgers." What does that mean?

A. The words are, "Transferring dash overtime ledgers."

Q. That is what your interpretation of it is?

A. That is the wording there, counsellor.

Q. The words are just as I gave them, are they not—"Trans. over. ledgers"?

A. Yes, and I am amplifying the abbreviation sir.

Q. How do you interpret the next entry?

A. "Transferring rental ledgers."

4697 Q. $284. carried out in the column under "General Expense"?

A. Correct.

Q. What are the sources through which this information comes into this book?

A. That comes to us from the branch office payroll.

Q. And into the branch office payrolls from the report of the man in charge of that work?

A. The branch office payrolls are all signed by the superintendent of the branch.

Q. Who makes them up; who keeps the time book in that branch?

4698 A. I cannot answer that question.

Q. Well, is it kept by somebody?

A. Unquestionably, sir, and checked by the superintendent and signed by him.

Q. Don't you know who is in charge of the 15th street branch?

A. I do. The superintendent is in charge, but who makes up the payroll I cannot answer.

Q. Don't you know who takes charge of the 4699
items?

A. The superintendent does.

Q. Would he not make up his time list for overtime?

A. He may make it up personally. I do not know that, however.

Q. Personally you do not know just how this came here, but you are assuming, according to the system, that it came in through the branch office pay roll?

A. I know every pay roll must bear the approval of the branch superintendent before it is paid. 4700

Q. I am not asking you that; I am asking you how this information——

A. Came through the pay roll.

Q. (Continued)—came into there, into the records marked for identification?

A. And I tell you it comes from the branch office pay roll, approved by the superintendent.

Q. And the overtime would be on the same pay roll?

A. It would.

Q. Have you gone into the question of overtime last year?

A. I have not. 4701

Q. You have no personal knowledge then, of the overtime, allowances made for overtime?

A. I know that periodically it is necessary for us to transfer our consumers' ledgers, because they become filled up, and it is a stupendous job to do it, and it has to be done at night, for which they are paid.

4702 Q. Do you know personally of the arrangements made as to overtime during the year 1918?

A. Well, I am in a little doubt how to answer your question, counsellor. The facts are that these men have to work overtime, and they are paid for it.

Q. I am not asking you that. That is axiomatic, that they are going to be paid for their time. Do you know anything about the arrangement for overtime?

A. Personally I know of that arrangement made by the Company and approved by its officers, and it is a regular routine as required.

4703 Q. Whose discretion is used in that matter?

A. The general superintendent's of the commercial department.

Q. Who is he ?

A. Mr. Frank R. Barnitz.

Q. That is a matter which comes particularly under his domain?

A. Under the commercial department, yes, sir.

Q. And it is done pursuant to some rule made by whom, the executive committee or who?

A. Pursuant to a policy established by the company and in operation for a good many years.

Q. Is there a general rule covering it, or is it
4704 something that varies from time to time, according to the exigencies of the occasion?

A. It is a regular routine, counsellor. Whenever the consumers' ledgers become filled up, it is necessary to transfer them and open new ledgers, and for that purpose the company pays overtime, as the work has to be done at night.

Q. You have here under the month of May a similar entry, have you?

A. Yes. 4705

Q. That is, "Trans. App." What does that refer to?

A. Let me see if I can read this.

Q. It needs a strong glass to get those little letters, doesn't it?

A. Indeed, it does. Well, I am unable to read that middle word, Mr. O'Brien.

Q. It is very, very fine, the handwriting is, is it not, Mr. Brundage?

A. It is very fine, yes.

Q. Very fine, almost impossible to read with your glasses? 4706

A. It is almost copper plate.

Q. And it is not put in on the line; it is interpolated, isn't it?

A. Well, that does not mean anything.

Q. Well, I asked you a question. Is it on the line?

A. It is not.

Q. There is another entry on the line there?

A. Yes.

Q. And this is put in between this particular line and the line above?

A. Yes.

Q. That line above is also covered with an item? 4707

A. Yes, made necessary by the fact that there were two postings from the same roll, and that is undoubtedly in transferring ledgers.

Mr. O'Brien: I move to strike out the answer of the witness. I am asking here for a fact, to bring it out on the record.

The Master: I will let it stand.

Q. Can you explain what that item means?

4708 A. Yes; it is undoubtedly overtime paid on the branch office payroll, and included in the items chargeable to this account.

Q. There is no branch office mentioned there, is there? There are just the letters "B. R."?

A. Right.

Q. And no particular branch mentioned?

A. Right. That is because this account is all 15th street branch, and it is not necessary to identify a particular branch unless it was some branch other than the one to which we refer.

Q. Why do they include "Branch 2" above?

4709 A. Well, I think they ought to do it right along. The book-keeper did not do it.

Q. As a matter of fact, they use "Branch 2" in some places; here they have not put it in at all?

A. Here they have not identified it at all.

Q. Branch 2 is the 15th street branch, isn't it?

A. It is.

Q. And the entry "Branch 2" above is surplusage, isn't it?

A. Superfluous. If there were no mention made of the branch, we would understand and identify it as the payroll applicable to the 15th street branch.

4710 Q. I call your attention to page 965 of this same exhibit. That is Reynolds' handwriting, is it not?

A. All through this month of January, I should say yes.

Q. What is the name of the title of the account?

A. Promotion Expense Gas Appliance Department.

Q. And there are numerous entries on that page?

A. There are. 4711

Q. I call your attention to the entry opposite, "Jan. 8" and that is to Mr. who? What is the name inscribed?

A. A voucher in the name of R. E. Livingston.

Q. Who is he?

A. He is one of our employes who is engaged as the editor of Gas Logic, a magazine that we publish monthly and disseminate among our consumers.

Q. And these items, the first three items opposite his name, are carried over into a column called, "Gas Logic"?

A. They are so carried. 4712

Q. He is the publicity man in the complainant company?

A. No.

Q. Why do you say no?

A. Because that is not what he does, so far as I know.

Q. Why do you say no? Don't you know he is?

A. No, I do not.

Q. Will you say he is not?

A. Yes, so far as I know. I know that his duties are to run——

Q. Is that your knowledge of these books?

A. It is not a question of these books you are 4713 asking now.

Q. I am asking you about the company's books. Would you say that would measure your knowledge of the company's books, that you do not know he is the publicity man of the complainant?

A. I do not know that the duty of any man has anything to do with the books, counsellor.

Q. It has to do with expenditures, doesn't it?

4714 A. And the expenditures are correctly recorded here charged to gas lighting.

Q. I am asking you again now, and just give me your positive answer, as to whether one way or the other, you do not know that Mr. Livingston is the publicity agent of the complainant company.

A. I should not so describe him.

Q. Do you know what work he does do?

A. I know that he runs "Gas Logic".

Q. To whom does he present vouchers for his work?

A. Most of his vouchers come to the accounting department approved by the president of the com-
4715 pany.

Q. Directly from the president?

A. Yes, sir.

Q. And has the president the power to O. K. an account and have it paid?

A. I should say yes.

Q. Is there some rule of the board of directors that permits that?

A. I should say yes, because the vouchers have to be submitted finally to the executive committee.

Q. I asked you now about your knowledge. Not what you develop out of your theories, but is it a
4716 fact that the president is authorized to O. K. certain payments under the rule of the board of directors?

A. Subject to the approval of the executive committee, yes, sir.

Q. Have you ever seen any vouchers of Mr. Livingston?

A. I have.

Q. Do you remember them quite well?

A. I could not say that, counselor. Because there

are so many vouchers passing over my desk that 4717
I do not identify any particular cases. I know that I have seen charges for Mr. Livingston.

Q. And are the entries not made "publicity" on those vouchers?

A. I do not recall such a wording, sir.

Q. You do not recall it?

A. No.

Q. There are entries here under "Gas Logic" of 109.60, 984.78, 79.46, 15, 32.64 on this page, are there not?

A. There are, yes.

Q. I ask you if there is not a column entitled, 4718
"Newspaper Advertising" on this page?

A. There is.

Q. And are there various entries of various amounts under that column?

A. Yes, sir.

The Master: Mr. O'Brien, I think I will have to limit this examination. I have been patiently trying to listen to the questions and have been trying to determine in my own mind what possible bearing they might have upon the receipt or exclusion of these books in evidence.

Mr. O'Brien: I will tell you, your Honor. 4719

The Master: What has all this got to do with it?

Mr. O'Brien: I have made an examination of the various books that have been offered in evidence, that are marked for identification. Some of them I may not have had an opportunity to get into. But I find information there which I want to develop in the examina-

4720 tion of the witness that bears directly and positively upon the objection that will be made by me to the admission of these books in evidence. One of them, this particular one, goes to this: Here is an account; in the first place we have determined that the particular items, I was asking the witness about that. To get the real source of information we must have the statement made by the president of the company O. K'ing that payment.

The Master: Yes.

Mr. O'Brien: So much for the source by
4721 which it came into this record. Indicating that there is an original record made, we will assume, or presumably, at the time of the transaction.

The Master: I think that is perfectly clear and has been perfectly clear for hours.

Mr. O'Brien: The second point, of course, is that these books contain a large number of items that are not proper in this case and are not a part of a rate case, expenditures of money that have no application here, because they are not proper to the gas making business or because they relate to a prior year, or be-
4722 cause they have not been properly allocated or because there is no information here in the record showing that they are properly allocated.

The Master: That has been perfectly clear for some time, Mr. O'Brien. It is perfectly clear upon this record that there are items in these books that you contend are not proper charges in favor of the company in arriving

at the rate to be charged for gas, or as to the 4723
cost of producing it. Don't spend any more time on that. You have also developed the fact that there are witnesses in the employ of the company now who made these entries. You have likewise developed the fact that at least one man is in Georgia.

Mr. Ransom: Alabama, I think.

Mr. O'Brien: I will try not to cover ground that I have already gone over, as I go along.

The Master: I will limit your cross-examination now unless you can show me what point you want to develop, and how you are going 4724
to develop it, so I can see what it has to do with the question that is before me, which is as to the admission of these books in evidence.

Mr. O'Brien: I will illustrate by telling you what I have already done. We have shown here large amounts of money, and we have not the original data that would justify the amount. In the second place, they are absolutely extraneous to the gas making business.

The Master: You have developed that?

Mr. O'Brien: The fire insurance business, the loans to employees, the loans to various other people. 4725

The Master: You have all that.

Mr. O'Brien: Here is another branch of it—I am not going to dwell long on it, here is a promotion expense.

The Master: You have developed that.

Mr. O'Brien: The complainant may contend that this is a source of profit to the complainant of which the consumers will get the benefit,

4726 but it is a matter which must be covered in evidence in this case, it must be covered by separate accounts——

The Master: That is not the point that is before me.

Mr. O'Brien: Yes, it goes to the reliability of their accounts.

The Master: No.

Mr. O'Brien: I will, as I go along——

The Master: No, you are going to tell me now what further point you want to develop and how you expect to do it before I permit

4727 any further examination.

Mr. O'Brien: Each item will show by itself——

The Master: No, I want you to tell me.

Mr. O'Brien: In addition to what I have already indicated, I mean to find out what this witness knows about these books, and I am going to satisfy your Honor that he doesn't know anything about them.

The Master: I am not going to allow you to ask any more questions on that.

Mr. O'Brien: How am I to test his knowledge unless I go through with the examination

4728 and bring it out?

The Master: I shall rule now that I will not permit any further examination upon the point of testing this witness' knowledge of these books. I will not permit any more of it.

Mr. O'Brien: Your Honor, I am going to take up each book and record, and refer to individual items there, to indicate that he is not in a position to come in here and give you

a reliable statement as to the accuracy of these records. 4729

The Master: I am going to assume in passing on this question, that Mr. Brundage is the head of this accounting department, or is an officer in charge of it, and as such has no personal knowledge about any single item in these books, and I am taking his testimony simply on the broad general proposition that he, as an officer of the company, knows that they have a certain system of keeping their acounts, and keep certain books, and that they hire men to make entries. I am assuming that he cannot himself testify to a single entry as being absolutely correct. You cannot get it any broader than that. 4730

Mr. O'Brien: The purposes of my questions are so many that I cannot in a hurried statement enumerate them all. I want to bring out for instance, as to this account, that the dates are not kept seriatim, that there are some dates that cover the previous month and previous year.

The Master: That does not mean it is not seriatim.

Mr. O'Brien: I mean it is not chronologically kept. 4731

The Master: Do you mean that after February you have some December items?

Mr. O'Brien: I do.

The Master: Just show me one.

Mr. O'Brien: I see in the month of January we have incorporated items in the month of December.

4732 The Master: That has been explained.

Mr. O'Brien: Another thing is the fact that we haven't them here in chronological order, and for all we know they might have been added after the month was all closed.

The Master: I want you to show me any item where, having in order entries made in January—I am simply illustrating—and then entries made in February, that there has been interlined or interpolated, or anything else you want to call it, an item of a previous date to fix up the record.

4733 Mr. O'Brien: I am going to ask the witness about the first item here.

Q. What is that, Mr. Brundage?

A. The first item entered in this ledger in the month of January is a bill of the H. Bainbridge Company, dated December 29, 1917.

Q. Now, further down there is another item, is there not, 12 31?

A. That is an expense voucher dated December 31st.

Q. Covering salesmen's salaries and commissions?

A. It is.

4734 Q. Amounting to $2,692?

A. Yes, sir.

The Master: Let me see this a minute, will you?

The Witness: May I say, your Honor——

Mr. O'Brien: No, you may not say without my objection.

The Master: What I wanted to know is, Mr.

Brundage, this first item here is under what 4735
date?

The Witness: Entered in the month of January, and bill dated December 29 of the preceding year.

The Master: December 29?

The Witness: Yes.

The Master: Well, what date in January was that entered in this book?

The Witness: I cannot determine the actual date when it was entered upon this record.

The Master: What is the next item there?

The Witness: That is a bill dated January 4736
7th of the year 1918.

The Master: And then I see in four or five lines further down there is an entry under date of February 2nd?

The Witness: Yes, sir. Those, your Honor, are the dates of the bills of these various creditors which we get through as rapidly as they may be properly checked and proved.

Mr. O'Brien: Just a minute. There are in here—the date is in here without any explanation such as you have just given, isn't it?

The Master: Wait a minute, Mr. O'Brien. What doesn't seem to be in this book is the date 4737
the entry was made in the book, except under the date of January.

The Witness: That is right, it does not bear that date; it bears the date of the bill.

Mr. O'Brien: Here is another item I just call your Honor's attention to, $3,112.31, $2,692——

The Master: That doesn't mean anything.

4738 Mr. O'Brien: It is the same all the way through the book.

The Master: I would much have preferred to have seen the date when the entry was made in this book, with reference to the date of the bill.

The Witness: We can obtain the date from the voucher record, your Honor, but there is no necessity of entering it in our ledgers, further than the date of the bill, in order that the bill may be identified and readily taken from our files in case it were needed.

4739 Mr. O'Brien: Your Honor, I have been through a great many cases in this and other books, and I wanted to call your Honor's attention particularly to some of these matters that are not arranged apparently, in chronological order.

The Master: Well, show me some then.

Mr. O'Brien: You will find, for instance, that is true of this case right down through.

The Master: Yes.

Mr. O'Brien: Take, for instance, we find—farther down the page, under Accounts Receivable, we have a 1231 account.

4740 The Master: Yes.

Mr. O'Brien: We have 1107, Municipal Gas Light Company; we have 1231, and so on; 1218, 1231, with different items in it; well, then, you go over here to the following months, and you will find reference there not only to the January, but also to the previous year. We have an item here, Municipal Gas Lighting Company, 1130, and further down we have an-

other entry made, as your Honor will see, on 4741
page 966, a reference made to 918 of 1917, and further down——

The Master: Let me ask you, Mr. Brundage, how does it come about that it is three or four months contained in that item?

The Witness: It happened, your Honor, that in a company handling as many bills as we are, it is quite frequently impossible to get the creditor to render the bill so that we may get it into the month to which it belongs. Now, by the time you come along here to the end of this month, that sort of delay going back into the 4742
previous month, does not apply.

The Master: Mr. O'Brien; I shall rule now, that having permitted you to cross-examine this witness for several hours, if not more, not all to-day, I am including last Wednesday,— I am satisfied that irrespective of the other criticisms you may make of the entries appearing in the books, and as to their being binding upon the defendants, and irrespective of any claims that might be made that certain of the items must not be considered as operating expenses, that these books have been kept by this corporation in the usual course of their busi- 4743
ness.

Mr. O'Brien: Your Honor, before making that ruling——

The Master: I won't permit you any further cross-examination.

Mr. O'Brien: I have got some matters to develop out of the other books that are peculiar of these books. For instance, even on this page

4744 there are a number of matters that present a peculiar situation that we have not gone over. For instance, if your idea is that I may be repeating something testified to already, it has been done more to show the presence of matters which present this peculiar situation.

The Master: Well, pull out some other book.

Mr. O'Brien: I am going over this too carefully to ask your Honor to waste any time over it.

The Master: Well, Mr. O'Brien, you are
4745 asking these questions because you think from your point of view they are essential to your case. I don't want to be understood as insinuating or intimating that you are asking them——

Mr. O'Brien: If I were to come in and pick out here and there a few isolated cases that might involve 22 cents overlapping here and there of the previous year——

The Master: Yes.

Mr. O'Brien: I would be wasting your time and so on, but what I want to do is to present a sufficiently large number of instances of the
4746 various objectionable features that I have in mind, to have you know, to have you convinced that it is general and not exceptional cases. Now, you can take that book, and it is difficult for me to put into the record and bring to your Honor's attention the various matters that are in there that are absolutely no part of the gas making business.

The Master: I will assume it for the pur- 4747
pose of discussion. I will assume it.

Mr. O'Brien: Not only that, but the facts as we go through the other books, there are many new and novel features presented. Now, let me illustrate. You take that book, they have a book called the operating journal——

The Master: Let us have the operating journal. Which volume is it? Is there more than one?

Mr. O'Brien: I don't know how to tell your Honor what I have in mind except to tell it orally. 4748

The Master: Well, I asked for the book, Mr. O'Brien. What is it you wanted to draw my attention to?

Mr. O'Brien: I wanted to tell your Honor you can go into that book all the way through it and it not only involves a matter of accounting, it not only involves when they presented it here and offered it in evidence and I objected to it, questions of figures, but it involved many other matters that have not been proven. Almost every item—there you will find adjustment figures all the way through, you will find there that they would take a certain amount 4749
that had come in in a total from some underlying and original record, and they have taken it and split it up in accordance with their own judgment, and that is only by way of illustration, and there is a perfect mine of objections to these books.

The Master: You know, Mr. O'Brien, that a journal to me means nothing.

4750 Mr. O'Brien: Well, your Honor——

The Master: Because my experience has been that whenever an accountant wants to put something through his books, he journalizes his entries, whatever it means, but when I try to find out from an accountant what is done, why, he says we journalize it through our journal. So far as the journal is concerned, you need not get wildly excited about it.

Mr. O'Brien: I am not getting wildly excited, I am calling your Honor's attention to it, if you will turn to the journal, what he called
4751 the operating journal, I don't know why they use the word operating in its application in the title of these books, the word would seem to indicate that these accounts are confined to operating expenses, but we find they pertain to the capital expenses. Now, when you receive these books in evidence, you should know, your Honor, that, taking this journalizing book, that they take certain amounts that come in, representing moneys spent by them or by somebody else in their behalf, and they would take them and split them up into various amounts and allocate them. Now, the question as to
4752 whether they are properly allocated, the question whether they should go to capital or go to operating expenses, or whether the divisions were properly made between the various companies, whether the percentages, the great divide between this complainant and its affiliated companies, is correct, and that is a matter that is not covered by the statement of the witness on direct examination by Judge Ransom as to the system under which they keep their books.

In other words, it is outside the qualifications 4753
or the justification, if I may use that term, the attempted justification of these books through the testimony of the witness.

The Master: Well, what you have just said——

Mr. O'Brien: No, they are objectionable on that account.

The Master: Wait a minute, will you. What you have just said does not require cross-examination, because it appears from the books itself. I can see the point of your argument on the offer to mark them, I can see where there 4754
is a good deal of force in the contention that they can not by simply arbitrarily dividing charges in some form make evidence for themselves in that way. I can see where these journal items may be subject to criticism in a number of different forms, but that comes from the book itself. We don't need a lot of cross-examination for that, I can see that.

Mr. O'Brien: Well, that particular objection I have just referred to goes to this particular witnesses' answers. Now, my contention is that the journal items, at least the many that I went over and analyzed, are not covered by 4755
the testimony of the witness and his statement as to the general accuracy of the books of the company, it does not cover those books, and therefore before your Honor had any foundation whatsoever in any other testimony, they are absolutely inadmissible.

The Master: Well, that is different. I am

4756 going to listen to argument as to the admissibility.

Mr. O'Brien: Well, I will take a few more illustrations, then I will turn from that book. I just want to call your Honor's attention to enough of them to indicate just what I had in mind.

Mr. Ransom: May I just say this: Of course the matter of these allocations which appears there we shall expect to explain the basis of them by the testimony of other witnesses. Necessarily those witnesses will be called to the stand, and necessarily any receipt of the books
4757 is upon that basis, when you go into that situation.

Mr. O'Brien: Before I get through I hope to convince the Court that you have the cart before the horse.

The Master: Well, I don't care how they are hitched up so long as they ultimately lead——

Mr. O'Brien: I want to show how the gas is made, your Honor, and show how the accounts are kept, and the purchasing account, and the underlying features of the case, but they come right in here and out of a clear sky,
4758 dump in these books that are kept in the clearing house on 15th Street——

The Master: Tell me what item you want to call attention to here, just take one item for illustration and see if we can get rid of this trouble here.

Mr. O'Brien: Your Honor will refer to page 88.

The Master: Yes, What do you want to ask 4759
the witness about page 88?

Mr. O'Brien: Item 217.

The Master: What is item 217? Item 217 reads "Plans withdrawn from service, disbursed through sundries. Original cost of property retired from service during the month of March, 1918, as per report from the meter repair shop on file checked in bill December 31, 1918, $2,687. meters $2,775." Now what is the question?

Mr. O'Brien: The point about that is that it refers to an original record, and this is, therefore, not admissible. 4760

The Master: I know that, but it appears from the book——

Mr. O'Brien: Well, I want to call enough of those to your Honor's attention so as to explain the argument on the objection I make.

The Master: Well, it is plain to me, and I will state on the record that it is perfectly clear to me that all the entries in the journal refer to other original reports or vouchers of some kind, and likewise the ledger there refers to this journal or to payroll sheets or vouchers of some kind. 4761

Mr. O'Brien: Well, not only is that point brought out, but you also bring out here the system—there is nothing at the top of the page to indicate to what it refers. They have three or four columns here in which you may note cross references, but there is nothing there to say what they are.

The Master: You and I will never find out

4762 what anything is going to a journal, Mr. O'Brien.

Mr. O'Brien: Well, your Honor, I will ask the witness. Maybe he could tell us.

Q. What figures should be in the first column, Mr. Brundage, on the lefthand side of this page, referring to page 88 of this exhibit——

The Master: Let me ask a question. This always seems so perfectly stupid to me here. The last two columns here, they first charge an amount, and then they credit it, or *vice versa;* in other words you always see the item entered twice, why is that?

4763 The Witness: That is absolutely necessary and is the practice of double entry bookkeeping, your Honor.

The Master: I know you men always find it necessary.

The Witness: You charge that amount and credit it there.

The Master: The first item is 4231. What is meant——

The Witness: It is the operating ledger folio upon which this debit item was posted.

The Master: Then the next one is 416?

4764 By Mr. O'Brien:

Q. How do you know that? How would one who is not working on the books know that? There is no reference made to that effect in any title on this page or any other page of the book, is there?

A. Any man who had the fundamentals of accounting in his mind, would know what that was, your Honor.

Q. He would expect to find a ledger entry in the 4765
journal?

A. He will find a reference here to the ledger page upon which that item was posted.

Q. But how would he distinguish that page from the page on the next two columns?

A. Because in this column——

Q. How are you going to know whether that was the journal or some other book?

A. The first column is used for indicating where the debit items are posted, and the second column is used for indicating where the credit items are posted. This next column is to give a number to 4766
the journal entry. You will find each one numbered in proper sequence.

Q. Whose handwriting is that on page 88?

A. That is the handwriting of a man by the name of De Hart.

Q. Is he still with the company?

A. He is not.

Q. Do you know where he is?

A. I do not.

Mr. Ransom: The witness tried to give an answer with regard to the double entry system. May he complete his answer?

The Master: How long has Mr. De Hart 4767
been away from the company?

The Witness: Mr. De Hart left us, I should say, about six or seven months ago.

The Master: And you don't know where he is?

A. I do not, sir.

The Master: What is the next item you wanted to call attention to, Mr. O'Brien?

4768 Mr. Ransom: May he finish his answer with respect to the system there?

Mr. O'Brien: Oh, we all know what this means here. It is just one column balances the other.

Mr. Ransom: Well, let the witness explain.

The Witness: I wanted to give the answer to get it in your Honor's mind very clearly.

Mr. O'Brien: We will agree on that.

The Master: I wish you gentlemen would stop now until this witness answers the question.

4769 The Witness: I just want to get clear in your mind, your Honor——

The Master: You will never get it clear in my mind.

The Witness: Now, the double entry system requires that you have a debit for every credit.

The Master: Yes.

The Witness: The amounts must balance, because as you take these items and post them in your ledger, you then take a balance from your ledger and the two items, all of the debits and all of the credits must balance or there is something wrong with your books.

4770 The Master: Well, why do you have to put the same entry in that column as you do in that column, one following the other?

The Witness: Because that is the debit item to be posted in this account, and that is the credit item to be posted to that account.

The Master: Well, why can't you put them in one account; it is the same figure?

The Witness: I suppose you could put them

in one account, but that is an established prac- 4771
tice, going on for hundreds of years.

The Master: I know it, but why?

Mr. O'Brien: What is that item you have just been illustrating the system with?

The Witness: That is a Broadway-Fourth Avenue-Subway account.

Mr. O'Brien: And that is charged up to General Suspense?

The Witness: No, it is charged to Subway Account.

Mr. O'Brien: It is a credit to the General Suspense account? 4772

The Witness: Yes, it is.

By Mr. O'Brien:

Q. Is General Suspense Account any different from Miscellaneous Suspense?

A. General Suspense, no, it is one of the same items.

Q. Didn't you say there were only three suspense accounts?

A. I didn't say how many there were, counsellor. I told you there were several suspense accounts.

Q. You say now you don't confine it to three suspense accounts?

A. I did not say I did. 4773

Q. Is this the same as the Miscellaneous Suspense?

A. Yes.

Q. Will you say it definitely, as though you believed it? Do you believe it? You are using Alrich's rising inflection.

A. Pardon me, if I followed Alrich. The deter-

4774 mination as to what account it was posted in would be found on the ledger.

Q. Well, never mind referring to it. I am trying to test your memory and your knowledge of these books. I will ask you now, can you tell yes or no, whether or not General Suspense account is the same as Miscellaneous Suspense?

A. I will say yes.

Q. Now, I call your attention to page 89.

The Master: You need not waste any more time.

Mr. O'Brien: The point is that there were

4775 some original records made contemporaneous, we will assume, with the transaction, and that that is the best evidence, at least, the only admissible evidence that might come in in the shape of documentary evidence.

The Master: Do you want to bring something out on page 89?

Mr. O'Brien: This illustrates splendidly. I have some other pages to bring it out, but we have it here on page 89, an item numbered 218.

A. Yes.

Q. This item is sundries to cartage?

A. Yes, sir.

4776 Q. Is this not the inscription on the book, "For the value of work performed by our trucks during March 1918, for the following accounts, computed at 50 cents per hour for single and 70 cents an hour for double, as per monthly cartage reports on file"?

A. Yes.

Q. That is correct?

A. The entry so shows.

Q. And there are various entries made of various 4777
amounts that it refers to?

A. Yes, charging various accounts.

Q. And the monthly cartage reports are kept in what branch of the company's business?

A. They are part of the accounting department records.

Q. Well, if the cartage was done, say from the 99th street station, bringing over coke from the barge, or from the coal yard into the generating house, that would come in—such cartage would come in the same way as this particular item?

A. The report from the 99th street station would 4778
show the number of hours and what the hours were.

Q. And the report would come to Mr. De Castro from the man doing the work, or the man in charge of the yard, or trucking, and he would have the man make his statement, would he not?

A. Yes.

Q. He would turn his time sheets over week by week?

A. Each day.

Q. Each day, and they go into the works' office?

A. Yes.

Q. And they would be there audited by the works' clerk? 4779

A. Yes.

Q. And the monthly report would come down to the main office.

A. Yes.

Q. When they refer, therefore, in that item to "as per report to the yard"——

A. They refer then to the monthly cartage report.

Q. The monthly cartage report?

4780 A. Yes, signed by the superintendent on file in the accounting department.

The Master: Now, you see, Mr. O'Brien, you have simply spent a great many questions developing a point which had already been developed, namely, that this entry was based on other reports and other papers. Now, don't let us have any more of it.

Mr. O'Brien: Well, I will pass on now, your Honor, to something else.

The Master: Before you ask any questions on that next case, give me your point that you want to bring out.

4781 Mr. O'Brien: Well, this goes to the question of allocating certain expenses, sundries to operating and restaurant.

The Master: I won't permit any questions on it. The entries will speak for themselves and will be subject to such criticism as may be directed to them.

Mr. O'Brien: Well, I want to show your Honor that not only the fact which I have already brought out, that this is extraneous to the gas making business, but I want to show you how these little things creep in.

4782 The Master: I don't care how they creep in.

Mr. O'Brien: These are the entries, and I want to just get them on the record, so that it will be clear, before I make my objection.

By Mr. O'Brien:

Q. What is this item No. 256?

A. The journal entry No. 256 credits the clearing account known as "Operating Restaurant" and charges the Mutual Aid Society, and the miscel-

aneous general expense, with the cost of serving 4783
ertain meals in the general office restaurant dur-
ng the month of April, 1918, the first item being
or meals served to the Mutual Aid Society, and
he second item being for meals served to the Gas
Engineering Society and the Gas Accountants
Society.

The Master: What is the next item?

Q. Page 125.

The Master: What do you expect to prove by that page?

Mr. O'Brien: Now, your Honor, I call your attention here—we will assume that I have 4784
asked the witness about the page and the various handwritings here, and the distribution of these accounts, showing that there is something more involved on this particular page of this record, and similar pages in this book, than the mere O.K'ing of figures. There are matters of discretion, there are matters of whether they are properly allocated, and who has charge of them, whether it is something done by the president or the executive committee, and what the source of the authority is for making the allocation that had been made. Your Honor, we have a page here ap- 4785
parently with interpolations made, it is a different handwriting altogether. We have the title put in there, and apparently right under that a different handwriting.

Mr. Ransom: Why don't you ask the witness?

Mr. O'Brien: The Master asked me to explain what I want to bring out.

4786 The Master: I asked him to explain wha
he expects to develop.

The Master: I am going to ask the witnes
just one question in reference to this page.

By the Master:

Q. I find in journal entries 312 to 313 and 314
statement in handwriting apparently entirely di
ferent from the handwriting used in writing th
general items of account there. Do you know an
thing about it? Do you know whose handwritin
that is?

A. Yes, I recognize that handwriting.

Q. Whose handwriting is it?

4787 A. The entry itself is in the handwriting of th
man De Hart to whom I referred.

Q. And these entries?

A. The explanatory wording is in the handwri
ing of a man by the name of Bowes.

Q. Do you know anything about the circum
stances under which the explanatory matter,
you call it, was written in?

A. No, I do not. There is evidence here on th
face of the record that when that entry was ma
it was known that there would be an explanato
wording put in there, as space was left for it.

4788 Mr. O'Brien: I move to strike that o
There is the evidence, he is not passing
the evidence of this book.

The Witness: This space having been l
is evidence that there would be explanato
wording to be put in.

By Mr. O'Brien:

Q. There had been some lines put in in pen

this particular inscription has been inserted under 4789
item 312, 313 and 314?

A. Yes, there not being sufficient lines to put it in, and therefore a double line was used.

Q. Do I read this inscription correctly, item 312—"Gas Appliance rents, Hester Street Branch," with an amount carried out; "Fifteenth Street Branch," with an amount carried out; Fifty-seventh Street Branch," with an amount carried out; "Amsterdam Avenue Branch," with an amount carried out; "Third Avenue Branch" with an amount carried out—to General Suspense Gas Appliance Rent, $784,773.96; and under that in a different 4790
handwriting, interpolated, the following:

"To transfer from the former to the latter account, the amount of yearly appliance rentals credited to the former account during the period from August 1 to April 30, 1918, such transfer being made for the purpose of prorating the revenue monthly upon the basis of the estimated annual revenue per thousand cubic feet of estimated annual sales for the year 1918." That is a correct reading of that insertion, is it not?

A. All but one date. You read August 1st, and it should be January 1st, from January 1 to April 30, 1918. 4791

Mr. Ransom: I think there is an unanswered question as to whether the witness had personal knowledge.

Q. Is that a correct statement of the insertion?

A. Yes.

Q. Now, there is a similar reference under item 313, which follows?

A. Well, the wording is entirely different.

4792 Q. I will read off item 313 on page 125, as follows:

"General Suspense, Gas Appliance Rents, 8288, 607.90; to Gas Appliance Rents, Hester Street Branch; Fifteenth Street Branch; Fifty-seventh Street Branch; Amsterdam Avenue Branch; Third Avenue Branch"—with the various amounts carried out opposite them into the column to the right, with the insertions following, as follows, in a different handwriting:

"For the revenue from Gas Appliance Rents applicable to the period from January 1 to March 31, 1918, based upon the estimated annual revenue per
4793 thousand cubic feet of estimated annual sales for the year 1918;" that is a correct reading, is it not?

A. That is a correct reading of that general entry.

Q. This appears on page 314, the next item, does it not, as follows:

"General Suspense Gas Appliance Rents 878, 273.74. To Gas Appliance Rents Hester Street Branch, Fifteenth Street Branch, Fifty-seventh Street Branch, Amsterdam Avenue Branch, Third Avenue Branch," with five separate amounts carried out opposite these names into the column to the right, and followed by the inserted inscription in
4794 different handwriting as follows: "For the revenue from Gas Appliances Rents, applicable to the month of April, 1918, based upon the estimated annual sales"—stricken out—"and revenue per thousand cubic feet of estimated annual sales for the year 1918" and carried out to the right the amount of $78,273.74? That is correct?

A. Yes.

The Master: Is there any other item in this book that you have in mind, particularly? 4795

Mr. O'Brien: Your Honor, I call your attention to that particular fact because that is a matter not of bookkeeping, but involves many questions, and only serves to illustrate——

Mr. Ransom: There is an unanswered question pending as to what the witness knows about it.

Mr. O'Brien: I did not ask him any question about that.

The Master: I think I did. Do you know how those entries came to be made? 4796

The Witness: Yes, I can explain that situation, your Honor.

Mr. O'Brien: It does not make any difference what he knows about it. I did not ask him that. I am not testing his memory on that particular question.

The Master: Well, I am.

The Witness: Do you want a word as to what that was?

The Master: Yes, if you know.

The Witness: I do know.

The Master: If you recall. 4797

The Witness: Yes, I recall a case now. For a number of years the company who send out the bulk of their appliance rental bills as of April 1st of each year apply the full amount of those rentals to the revenue for the month of April. That was done in April, 1918, but our executives in considering that determined that it would be more accurate accounting to

4798 insert the amount of this annual rental over the year by months, based upon the amount of revenue per thousand cubic feet rather than to put all that revenue in one month, and this first entry cancels what had been done, the second entry puts back into the revenue account three months' business, and the third entry puts in the fourth month's business, and brings it down to April 30, 1918.

Q. Then they rang in this change in the system in 1918?

The Master: You need not answer that character of question if they rang in anything.

4799 Mr. O'Brien: I will withdraw the words "rang in".

Q. They introduced for the first time in the year 1918 this particular distribution of that amount?

A. Yes, we distributed it that way for the first time in 1918.

The Master: Is there any other item in this book, Mr. O'Brien?

Mr. O'Brien: Your Honor, every other item in that book brings up questions where somebody's judgment has been used on an adjustment of that account.

4800 The Master: I am going to take that up when it comes to permitting the books in evidence. I do not want a discussion now, but there is a great deal to be said about offering in evidence books that draw conclusions or arbitrarily apportion things on journalized entries.

Mr. O'Brien: It is more like a diary than a book of account.

The Master: And books that carry in them 4801
items of receipts and expenditures, as such. I am frank to say that so far as these books show items of moneys received and paid out on vouchers for supplies, for coal, for oil, for labor, and moneys received for the gas sold—I am predisposed to accept the books on those items and not to require them to produce their original vouchers.

Mr. O'Brien: But, your Honor, they cannot do that. I want to be heard on that.

The Master: I have not decided it. I say "predisposed".

4802

Mr. O'Brien: I do not like that word "predisposed".

The Master: I know you do not like it.

Mr. Chambers: I want to have a word about that in cross-examination.

The Master: When I get beyond those items and get into the realm of journalized conclusions or items which apportion expenses I am in quite some serious doubt about it. That is what bothers me. But I do not think we need any further cross-examination. These entries speak for themselves.

Mr. O'Brien: Will your Honor see some 4803
more illustrations? Take page 262 and see the items of expense in regard to tolnol.

The Master: That is an argument that you do not need testimony upon.

Mr. Ransom: The books speak for themselves on those things.

The Master: I see it.

Mr. O'Brien: But these things are not such

4804 as you would expect to see within the covers of an account book.

Mr. Ransom: We do not contend that every item in these books is going to be on the rate basis in this case, or the statement of receipts and expenditures.

Mr. O'Brien: Then the books should not be in evidence.

Mr. Ransom: They should. These are the complete records of our business.

Mr. O'Brien: They should not be here.

Mr. Ransom: Surely they should.

4805 Mr. O'Brien: Wait until I get to the treasurer's books and we will show you a few things. I ask your Honor to look at page 262 and see the way the inscription on the tombstone there reads. See those various amounts and the way they take and juggle them. I do not say that in any objectionable way. But they are charged up to various months at will and then up to various accounts.

The Master: But do you not see, Mr. O'Brien, that you do not need to ask Mr. Brundage a lot of questions about it. Call my attention to it. I see it.

4806 Mr. O'Brien: Of course, we ought to take the time. It is crucial enough to take the time to go into 150 odd accounts here, because otherwise——

The Master: Do not forget this, Mr. O'Brien, that appreciating as I do the hugeness of the task before you and your accountants to analyze these books and the charges made in them, it may become necessary for me if I leave these

books in to strike out before the case is closed 4807
more or less of them.

Mr. Ransom: If they are not connected.

Mr. O'Brien: That is a bad process, your Honor.

The Master: This is not a case of a jury, where a jury hears something and it does the damage.

Mr. O'Brien: I know that, your Honor, but here is something brought in here. They call them operating journals. The name is a misnomer. You have got to hear various amounts and almost on every page—take any page in 4808
that record you want, your Honor, and it will only bear out my contention. Take this one on toluol, the question of the production of toluol and how they have allocated that expense. It should not be in this case.

Mr. Ransom: You would be awfully angry if it were not.

Mr. O'Brien: I am confining myself to the questions in this case. Turn to page 397. Your Honor will find here on page 397 an account called "Sundries" and "Sundries to Sundries." Mr. Brundage can correct me if I am wrong.

The Master: That sounds like a journal 4809
entry.

Mr. O'Brien: Sundries to sundries, dust to dust. Mr. Brundage can correct me as I go along if I happen to omit a word or misspell it. Here is an item for interest accrued on securities owned, loans and accounts——

The Master: Let me just interrupt you, Mr.

4810 O'Brien. Just one question I want to ask What does this account mean to represent?

The Witness: This represents the interes already accrued to the credit of the company applicable to the month of December, 1918, al of these various debtors being charged with th amount of interest, and these various revenu accounts being credited.

The Master: Go on, Mr. O'Brien. Yo wanted to ask a question?

Mr. O'Brien: Your Honor, I have referre to this particularly as showing the tremendou complexity of the subjects that are covered b
4811 the books and how foolish it would be to pu the cart before the horse, to take these book in evidence before there has been any founda tion laid. Later on when it is developed jus what the intercorporate relations of the com panies are, how they make their gas, how the have their system of mains and services and al that, we may have the foundation of many o these things that may be recorded in som shape here. But so far as my examinatio goes and the testimony in the case shows thes books that are general books have been kep
4812 as in a clearing house.

Mr. Ransom: Not at all.

Mr. O'Brien: Sometimes they are a tent book removed from the original transaction- where that is supposed to be recorded. I a just stating why I refer to that particula page.

The Master: Let me have the next item nov

We are going to have an argument about these 4813
books in a little while.

Mr. O'Brien: I will not take up any more of your attention on this journal except to ask you to take at random any page. Here you come to repairs to meters.

The Master: I would rather take an item like this, "Plant withdrawn from service suspense."

Mr. O'Brien: Well, we have had that one. That of course involves a question of allocation.

The Master: That is the kind of item that 4814
bothers me. There is an arbitrary fixing of an amount of withdrawal of capital.

Mr. Ransom: Not arbitrary, your Honor.

The Master: Why not?

Mr. O'Brien: Here is an account here of the Red Cross Fund where they distribute it. Far be it from us to question amounts spent in a worthy cause, but all through there are objectionable accounts that could not come into this case, particularly in this form. We have here the repairs to meters. It has not been yet shown here, the system by which they carry on this repair shop at 111th Street and divide 4815
up that expense with the affiliated companies, and whether the distribution is correct or not is something that would have to be substantiated by testimony in the case.

The Master: That is another question that is bothering me, how they are going to do these things.

4816 Mr. Ransom: We expect to do them and we will do them.

The Master: But it has not to do with the cross-examination of this witness.

Mr. O'Brien: Let me take as an illustration Repairs to Meters. There is at 111th Street and First Avenue a shop——

Mr. Ransom: Are we going to argue this thing now or argue it later?

The Master: I would rather you would not argue it now.

Mr. Ransom: Counsel just talks and talks
4817 and talks, and he does not dare interrogate the witness.

Mr. O'Brien: I have been interrogating the witness until the Court stopped me.

The Master: I have been trying to stop him.

Mr. Ransom: I would rather he interrogate the witness than talk about it. He has talked more than any witness in this case.

Mr. O'Brien: Before passing from this journal book I call your Honor's attention to any page you may turn to, and there is not an account, of the many that I went over, that
4818 does not involve many other matters than the mere reporting of figures of expense or of the receipt of money. They involve the discretion of somebody in the distribution of amounts which in their aggregate were found originally somewhere, in some original record, and have come up through the various channels and finally in the journal have been smashed up into various different items and sent to different

accounts. That only goes to certify the fact 4819
that it is not an original record. I will turn now to the treasurer's book.

The Master: Let us see the treasurer's book. (Book produced.) Is this what you mean, the cash book?

Mr. O'Brien: Yes.

The Master: Exhibit 199 for Identification.

Q. Mr. Brundage, that bears the same handwriting through the several pages?

A. Yes, that is all one handwriting.

Q. Whose is it?

A. A man by the name of Gerard. 4820

Q. He holds an official position in the company?

A. Not an official. He is what we know as a general office cashier.

The Master: Turn to page 26. That is not his handwriting?

The Witness: That is in the handwriting of a man by the name of Zeff, his assistant.

The Master: Page 1 is not in his handwriting?

The Witness: Right. That is Mr. Zeff's.

The Master: In other words, so far as we have looked through it rapidly we find two handwritings. 4821

Q. You would not call that Gerard's on page 26?

A. No, that is Zeff's handwriting.

The Master: There is another one entirely different, isn't it (indicating)?

The Witness: No, is Zeff's.

The Master: I am not going to have you look through every page here.

The Witness: For the record, I would say we

4822 have a cashier and assistant cashier. The cashier did the great bulk of this work. It might be that he was on his vacation for a few days, in which case Mr. Zeff made the entries.

The Master: Most of them seem to be in the handwriting of Mr. Gerard.

Q. This book runs back for many years prior to January 1st, 1918, does it not?

A. This was opened as of September 1st, 1917, and runs to April 30, 1918.

Mr. Ransom: The other books being here, the books subsequent to that.

4823 The Witness: Yes, the subsequent books being marked for identification.

Mr. O'Brien: Page 77. Suppose, your Honor, without taking up your time, I call your attention to these items without asking the witness questions.

Mr. Ransom: I would much prefer you ask him.

The Master: That is what I was trying to see if we could not do.

Mr. O'Brien: I will ask the witness about it.

The Master: All right, ask a question and
4824 I will get it quick enough. This made up from reports you got from the various branches, I take it?

The Witness: No, that is the cash book, written up from the check book, the stub of the check book.

Q. From the stub of the check book?

A. Yes, sir.

Q. And of course it comes into the check book

from the other channels such as you have indi- 4825
cated?

A. The check book stub and checks are drawn from the sundry creditors' vouchers that have been audited and are ready for payment.

Q. You have here Francis H. Leggett & Company, a payment to that company?

A. Yes.

Q. And Yaburg Brothers? They are the bakers' supply people, are they not?

A. I do not know that.

Q. You don't know them?

A. I do not.

The Master: Well, the Master does. They 4826
are bakers' supply people. I suppose that is something for the restaurant?

The Witness: If that is the business they are in, yes.

Q. And do you know Joseph Rothenburg to whom a payment of $153.50 is made?

A. I do not know them.

Q. Or the Solomon people?

A. I don't know them.

Q. Benjamin Schwab?

A. I don't know him.

Q. Don't you know those names appear fre- 4827
quently upon the books of the company?

A. A number of bills have come through——

Q. Do you know it or not? I want to know how familiar you are with the books of this company?

A. I know from seeing thousands of vouchers quite a number of our creditors, but to say that I know the people would be ridiculous.

4828 Q. I did not ask you that; I ask you now whether you are familiar with these particular firm names, these names and the business they are in?

A. I do not know the business they are in, and I do not know many of the firms.

Mr. O'Brien: Page 75.

The Master: You probably have some items here of people who furnished supplies that were paid for from time to time.

Q. There is a superannuated pay roll in your business, I take it?

A. Yes.

4829 Q. And there are payments made of $5,000, about every month, charged up to that account?

A. Approximately. I have not the figures in my mind.

Q. And those figures appear before you on the record, in the treasurer's book?

A. Yes, they would appear when paid.

The Master: Is that a pension roll?

The Witness: Yes.

Q. You have a pension roll there of payments made to former employees?

A. We call it the superannuation roll.

Q. There is such a roll?

4830 A. Yes.

Q. That is done pursuant to whose direction?

A. A resolution of the executive committee of the company.

Q. Would that seem to represent the amount of the expense of $5,000 a month?

A. Well, that is approximately a month. I have not the exact figures.

Q. I am asking you whether it is an approxima- 4831
tion.

A. Yes.

Q. I want to know how much you know about the books. I have been with them a few days, and I recall these names. Can you say what the amount is approximately per month paid out on this account?

A. Why not get it accurately out of the ledger?

Q. I ask you to approximate it.

The Master: You do not remember it, do you?

The Witness: I would not remember it. I 4832
could not say the figures out of my head.

Q. Do you know the amount paid to Sherman and Sterling last year?

A. I do not.

Q. I mean the attorneys for the complainant?

A. I do not.

Q. Can you approximate it?

A. No, sir.

Q. Do you know what it was paid for?

A. Anything paid to Sherman and Sterling, I should say, was paid for legal services.

Q. I mean the character of the legal services; do 4833
you know what they are?

A. No, sir.

Q. Do you know what portion of the amount was for work done in connection with this rate case?

A. I know that the account in which to record any expenses in this rate case was not open until this year, 1919.

Q. The amount spent last year has not been allocated in the books of last year?

4834 A. There has not been any spent.

Mr. O'Brien: I ask that the witness answer my question. That was not responsive.

Mr. Ransom: It is responsive and is truthful too.

Q. Do you know whether the amounts paid to Sherman and Sterling for legal services during the year 1918, involve services in connection with this rate case or similar matters?

A. I believe that it did not, but I do not know that.

Q. You do not know that?

4835 A. I said so.

Q. Did not the vouchers pass through your hands?

A. All vouchers pass through my hands, counsellor.

Q. You do not recall approximately the amount paid to them?

A. I do not. It is not to be expected that I would memorize them.

Mr. O'Brien: I move to strike that out, your Honor.

The Master: I will let it stand.

Mr. O'Brien: Will you turn to page 75. As

4836 a matter of fact, it is not a complete record, your Honor; it only covers three months.

Mr. Ransom: Here are the others if you want them. They have all been offered.

Mr. O'Brien: I was not handed the others then, when I was going over these books. I was not handed three treasurer's books.

Mr. Ransom: They were all there.

Mr. O'Brien: They were not in the room

when I asked Mr. Davis to turn over those 4837
books. He handed the one treasurer's book to me.

Mr. Ransom: That is the type of thing Mr. O'Brien continually does, your Honor.

The Master: I utterly disregard it, and I don't believe any court is going to pay any attention to it on the record.

Mr. Ransom: This case has gone on day after day, and more time has been spent in Mr. O'Brien testifying than all the witnesses put together.

The Master: What is there on page 75 you 4838
want to ask about, Mr. O'Brien?

Mr. O'Brien: While I am on that point, your Honor, I call your attention to the fact that the book we had before this, marked for identification——

The Master: Only runs to April?

Mr. O'Brien: Only runs to April.

The Master: There is another book here that runs from April up.

Mr. O'Brien: And the pages were blank for the rest of the book. It was turned over to me from page 41 to 151.

The Master: And it runs down to the end 4839
of April, doesn't it?

The Witness: End of April, 1918.

The Master: In other words, they finished this book by the end of the month?

The Witness: Yes, and started another one.

The Master: That is what I should have done.

Mr. O'Brien: There is no question about that. That is all right.

4840 Q. There is a payment here, is there not, reported as of January 8th, Robert E. Livingston, $1,024.09?

A. There is.

Q. "Civil Service Chronicle, $35"?

A. Yes.

Q. The Chief Publishing Company $15?

A. Yes.

Q. Do you recall those passing through your hands?

A. I do not.

Q. Did they have your O. K.?

A. I could not say without looking at the original vouchers.

4841 Q. Do you know why the payment was made to Mr. Livingston on that date?

A. I do not. I can only say it was on a properly approved voucher.

Q. Do you know why $177.45 was paid to the Gas Accountants' Society?

A. I do not. A properly approved voucher, audited, checked and ready for payment.

Q. I call your attention to page 76, the American Chemical Society. Do you know why the payment was made to them?

A. I do not.

4842 Q. Page 77——

The Master: You need not go any further, Mr. O'Brien. You have developed the part that there are a lot of items in that book that the witness does not know anything about, and some of them apparently do not relate to anything in connection with the actual manufacture of gas, like supplies to the restaurant, which you undoubtedly contend must be eliminated.

Mr. O'Brien: Yes. 4843

The Master: And you probably likewise contend that from these books offered in evidence there is no way of telling which items come within the category that ought to be allowed. That is your point. I will not allow any more.

Mr. O'Brien: Just a minute, your Honor; there are certain payments made there to various people that bring up some other questions.

The Master: What other questions?

Mr. O'Brien: Right on that page, I was about to call the witness's attention to a payment made to the New Amsterdam Gas Company of $80,036.48. 4844

The Master: For what?

Mr. O'Brien: I don't know what it is for, it doesn't show.

The Master: All right, then, it doesn't show. That is the very point you make.

Mr. O'Brien: May I refer to this without going into the record——

The Master: Certainly. I am going to get this thing in order now. I am not going to permit any further cross-examination of this witness. You can step down.

(Witness leaves stand.) 4845

Mr. O'Brien: There are some discrepancies in the account that I am going to call your Honor's attention to.

The Master: That will be all right, but I am not going to permit any further cross-examination of this witness at this time.

Mr. O'Brien: I am going to call your attention to certain matters that are apparently

4846 discrepancies, and show right from the book itself that the book is not complete.

The Master: You do not need the witness for that.

Mr. O'Brien: Yes, I want him to come here and explain it.

The Master: No.

Mr. Clark: I have some questions I would like to ask.

The Master: What line do you want to bring out?

Mr. Clark: It is along the line of showing

4847 just where the original books of entry are. That does not appear.

The Master: Yes, it appears perfectly——

Mr. Clark: It appears that there was something behind, but it does not appear, as is the fact, that there are behind these books real books of original entry which might be admissible in this case, but these are books of secondary and tertiary entry, and are not admissible.

The Master: I think you have developed that.

Mr. O'Brien: There are certain questions

4848 that I want to ask the witness about, there are some that need explanation.

The Master: Suppose I do not allow the books in, do you need any explanation?

Mr. O'Brien: No.

The Master: And if I allow them in you will have plenty of time to explain it, won't you?

Mr. O'Brien: No.

The Master: Why not? 4849

Mr. O'Brien: I will have time to explain, but this goes to an attack upon the statement made that these are accurate accounts.

The Master: I am going to permit one item to illustrate your point. Where may this be found?

Mr. O'Brien: I am going to call the witness's attention to page 177—I respectfully submit that I am entitled to cross-examine the witness as to the general methods of keeping these books and his knowledge of the accuracy of them. He made a sweeping state- 4850
ment as to the infallibility of their methods.

The Master: Mr. O'Brien, of course you are entitled to just what you have stated, and my ruling is that you have exhausted all the time I am going to allow you for that purpose.

Mr. O'Brien: When your Honor interfered with my examination just now by making a ruling I was about to call your Honor's attention to various payments that had been made, without consuming time and reiterating questions previously asked——

The Master: No, I think it is exhaustively covered. Now, this item on page 177 that you 4851
say is an error, or shows an inaccuracy, what is that?

Mr. O'Brien: I should quality that to the extent of saying that it appears to show an inaccuracy.

The Master: It appears to show an inaccuracy.

Mr. O'Brien: Yes, the witness might explain that away.

4852 The Master: Let us have it.

Mr. O'Brien: I am asking this of course without technical knowledge of what some of their terms mean. You not on page 177 of what is called Operating Ledger A, an account called, "Coal, 21st Street Station". Now they have here running through the several months the term "Production". By the way, your Honor, there is a similar incorporating of s in December, which makes it also objectionable. They have here something that they call production, and it is converted into terms

4853 of money, and it is put in red ink.

The Master: Well, we will find out what that is. Mr. Brundage, will you come up here a minute.

(Witness resumes stand.)

By the Master:

Q. Will you please explain these items in red ink on page 177 of Operating Ledger A opposite the title "Production, Service, and Sundry Debtors". How does that come under the 21st Street Station?

A. This is a stock account, the balance representing the stock on hand at the beginning of the year. Here are the debits representing bills rendered o

4854 various creditors for coal which is charged to the account. These red ink items are credits to the account representing coal taken out of stock and used, as in the first case, coal taken out of stock and used in production, and second, for coal transferred, the details of which will be shown in the journal entry; third, a small amount for coal sold and charged through Sundry Debtors.

Q. Is this in money?

A. This is in money. 4855

Q. In other words, the item opposite "Production" has reference to the amount of coal, in money, used in production?

A. Yes, sir, during that month.

By Mr. O'Brien:

Q. Is that the invoice price of the coal supposed to be used?

A. That covers the invoice price, plus the cost of handling.

Q. Plus the various costs after it is delivered?

A. The ledger shows here, this particular item to which you refer is taken out at invoice cost. 4856 These items here are also taken out representing the cost of labor and cartage and demurrage in getting the coal from the point of shippers' delivery into the bins.

Q. Based upon reports from some place to the main office?

A. Yes, sir.

Q. In other words, they would find their way first into the works' office at the 21st Street Station?

A. These entries are based on the engineers' monthly report of manufacture.

Q. Now, this particular month, you start with 4857 the balance on January 1st?

A. Yes, sir.

Q. Of $222,631.33?

A. Yes.

Q. And that represents in terms of dollars the amount of coal on hand at the beginning of the year, does it?

4858 A. It represents the invoice cost of the coal on hand at the beginning of the year.

Q. Is there any way in which you can show us that in this book?

A. What do you want to see? I don't follow your question. That is the invoice cost of the coal in the bins at the beginning of the year. These additional items represent labor, cartage and demurrage.

Q. Pointing to the balance carried over presumably from the previous month?

A. Yes, in getting this amount of coal into the
4859 bins.

Q. That involves a matter of survey at some previous time, doesn't it?

A. The quantity of coal?

Q. Yes.

A. The quantity of coal in the books is based upon the tonnage paid for, less the amount of coal taken out and used in production.

Q. Well, this is a capital account, then, is it?

A. It is a stock account, what accountants call a stock account, materials and supplies on hand.

Q. Are we to understand that they carry all the way through this account so far as the material is
4860 concerned, the invoice price?

A. Yes, as far as that first column is concerned it is the invoice price, charging the amount of the coal paid for and crediting the amount of the coal taken out.

Q. You have here various credits in red ink, and you have carried them over into the total column for January?

A. Yes, sir.

Q. And you have subtracted that from the amount 4861
representing the total balance as of January 1, 1918?

A. Yes.

Q. And that process is gone through with the credits all the way through the account, I mean to say, the subtracting of the credits representing coal used and the labor in using it?

A. Yes.

Q. And that amount in red ink is carried over from month to month?

A. Yes, sir.

Q. From the previous balance. 4862

A. Yes, sir.

Q. Why wasn't it done in the month of February?

A. Because in the month of February we bought more coal than we used, with the result that we have a net debit for the month rather than a credit, and it therefore became an addition to the stock on hand.

Q. Where is that shown?

A. Right here in the details. You see that figure there in pencil? That is a footing of these debit items.

Q. It is a pencil footing?

A. It is a pencil footing, $88,000., representing 4863
the coal paid for. $69,000. represents the coal used. There was therefore an increase in the coal stock of $18,000., and that carried across here, added to the coal on hand at the beginning of the month, gives the value of the coal at hand at the end of the month.

Q. What was the total of the added amount in the previous month?

A. In the previous month, up here we had coal bought $18,000., coal used $81,000., so we used more,

4864 and we therefore made a substantial credit here of $63,000. to the coal.

Q. There have been certain addenda in the account for each month, haven't there?

The Master: What do you mean?

Q. Right here there are certain items that have no dates. Apparently they are added after the month is over.

A. That is not true. All these items are entered under the date of January 31st.

Q. There are no ditto marks here.

A. It is not necessary, it is perfectly superfluous.

4865 These entries come through the journal in great detail.

Q. You mean that the term "sundry debtors" which appears without date, would be found as of January 31st?

A. It is a summarization for the month of January.

The Master: I think we have enough to keep up the discussion for a long while as to the admissibility of these books. I will not permit another question.

Mr. O'Brien: I would state to your Honor a few things that I would like to call attention

4866 to in the book.

The Master: Not another question, I will not permit it. Mr. Chambers has had his chance for cross-examination. Mr. Clark may have an opportunity to cross-examine on matters that are entirely new and not brought out before.

Mr. O'Brien: Will your Honor permit me,

without asking the witness, to call your at- 4867
tention to various items——

The Master: When it comes to discussing the admissibility of the books.

Mr. O'Brien: It is only a matter of a few minutes.

The Master: No, we will finish the cross-examination.

Mr. Chambers: If the Master please, you did not give me a chance to cross-examine after we made an examination of the books, which I would like.

Mr. O'Brien: I take an exception to your 4868
Honor's ruling as to the cross-examination, and I will state on the record that, having spent considerable time since the last adjournment in examining these books, there are many questions that I want to ask the witness about with respect to the objections to be made to the admissibility of these books that have been offered. These points are different from any of the points that have been previously covered. The points I have in mind might be referred to in the books themselves, or brought out by a few questions. These are matters
that I think, without spending much time on, 4869
I can clear out.

The Master: No, I will adhere to my ruling, and I will state on the record that the Master rules that he believes that counsel for the District Attorney has had the fullest opportunity for cross-examining this witness as to the character of the books offered and their accuracy.

Mr. O'Brien: There are other books here,

4870 the pay roll books and other books that ought to be examined to bring out new matters.

The Master: I do not believe that the cross-examination of this witness as to the items appearing in the books is at all helpful in deciding as to their admissibility. Counsel has proceeded to the point of indicating a number of grounds which will require discussion as to the admissibility of these books. Questions as to whether books which apportion expenditures, without further proof, and matters of that kind generally, create some very difficult

4871 questions; but I do not think a further cross-examination of this witness is essential to the matter now under discussion. An exception will be allowed to Mr. O'Brien.

Mr. O'Brien: I call attention to the fact that my examination so far has only related to operating ledger A, operating ledger B, the operating journal and the treasurer's cash book.

The Witness: And sundries debtors blotter.

Mr. O'Brien: Those books I would like to ask the witness some things about, your Honor. And I would like to ask him some general questions about minor matters in connection with

4872 the books kept by branch offices and books kept by the offices where they make gas, the manufacturing books and records of materials received, the inventories, or the annual surveys of property on hand, and the records of coal and oil used; also their labor records. These matters are very essential. I have not had an opportunity to go into them. They only serve

to emphasize from some new angles the points 4873
that I have already referred to.

The Master: I shall adhere to my ruling for the time being. I may modify it later on, but for the present I will adhere to it.

Major Clark, I will permit you to cross-examine on matters that have not been brought out. After that I may give Mr. Chambers a chance.

Mr. Chambers: The matters that I want to examine about are matters that I found out from them when I made the examination on Friday. I did not have an opportunity to cross- 4874
examine him since I have seen the books. I did cross-examine him up in the office.

CROSS-EXAMINATION BY MR. CLARK:

Q. Will you turn to the ledger page for the 21st Street station?

The Master: For what purpose?

Mr. Clark: For the purpose of taking that as a typical illustration and showing the original books of entry that refer to the accounts for gas oil, coal and labor that go into the making of gas, to show that there are original books of entry from which these books are made up. 4875

The Master: Go ahead. What is it you want to know, Major Clark.

Q. On the question of gas oil, and entry made for the 21st street plant for money expended for gas oil, will you explain how that item was arrived at; what is the process by which it gets into this operating ledger?

A. I thought I had explained that in my testi-

4876 mony last Wednesday, but I will gladly go over it again if you wish it.

Gas oil is bought under contract, and it is received in tank boats at this particular station that we are discussing. The oil is pumped from the tank boat into storage tanks with devices known to engineers, one of these drop rods, as I understand it, and the amount of oil received is measured——

Q. Is a record kept of the oil received?

A. A record is kept of the oil received. As a result of measuring and determining the quantity of
4877 oil received, a receipt voucher is prepared and signed by the superintendent of the station and submitted to the accounting department.

Q. And a record is made at the station of the oil received? Is there a book at the station for recording oil received?

A. Yes, there is a record—I think they call it the pump house sheet, this oil being pumped under the immediate supervision of the pump house man. That as recorded forms the basis for the receipt voucher for the quantity of oil delivered, which goes to the accounting department and is made a part of the permanent record upon which the
4878 sundry creditors' bill is paid.

Q. This pump house sheet; what is done with that? Is that kept at the station?

A. I believe it is.

Q. There are several of these sheets?

A. Yes.

Q. Do they become a permanent record?

A. How permanent they are I do not know.

Q. It is continued on from day to day on one sheet to another?

A. The record of it is, yes. 4879

Q. Now, for the expenditures for the use of gas oil at the station, a similar record is kept?

A. Yes; as oil is drawn from the tank, the amount withdrawn is determined, and monthly we get a report from the engineer of manufacture that a certain quantity of oil has been used. That leads to this journal entry.

Q. That monthly statement is made up from the daily sheet that they make up from day to day, contemporaneously with the use of the oil?

A. Summarized for the month, yes, sir.

Q. Summarized for the month by whom? 4880

A. By the station people, the station clerk, under the approval of the station superintendent.

Q. Is practically the same procedure gone through in relation to coal?

A. Yes, sir.

Q. That is bought under contract?

A. Coal was not bought under contract during the year 1918, due to the conditions under which we were all obliged to get coal. It was allotted by the Government.

Q. It was bought by the central office?

A. Yes.

Q. And allotted to the various plants? 4881

A. Yes.

Q. And the various plants checked the amount which they received, and which they recorded in a book?

A. They weigh the coal as it comes in. They also weigh it as it is drawn from stock and goes over the scales to the generator and retort house.

By Mr. O'Brien:

Q. Sometimes you bring it direct from the barge right into the generator house, don't you?

4882 Mr. Ransom: I object to Mr. O'Brien testifying any more. I thought we might have a few minutes without that.

The Master: I will not allow the question.

By Mr. Clark:

Q. There is a record at the station of the amount of coal received and the amount of coal used?

A. There is.

Q. Will that same state of facts apply to the use of cast iron pipe by the street department?

A. Yes. A record is made of the cast iron received and the use of it.

4883 Q. Do you know what form the record of the use and receipt of cast iron pipe by the street department is in?

A. Why, they keep a record which is prepared from the yard foreman's scratch record as items come in to him and are delivered to him upon order; and the three street departments keep a record in their offices of these receipts and deliveries and from that they transmit a record to the accounting department.

Q. These records are made contemporaneously with the receipt?

A. The report to the accounting department of
4884 pipe used is a monthly report. A daily record is kept by the individual street departments.

Q. And the record of pipe received is sent in on this receipt voucher?

A. As soon as received, yes, sir.

Q. On the question of day labor, or hourly employees, each manufacturing station keeps a time book?

A. Yes, sir.

Q. Which records contemporaneously with the

rendering of the services, how much time each man 4885
put in on each piece of work; is that correct?

A. That is right.

Q. And after that is done the superintendent of the station sends in weekly reports to you of the time of each man?

A. He does; each card being signed by the superintendent personally.

Q. What is done with those cards?

A. They are retained at the general office.

Q. And from those cards what record is made up?

A. The pay roll is prepared from those cards, and the distribution sheet, showing the amount to be 4886
charged to various accounts.

Q. And from the distribution sheet this entry is made?

A. For labor, yes, sir.

Q. There is a permanent record in each manufacturing plant of the hours spent by each laborer on each particular piece of work?

A. Yes, and you asked me last Thursday to produce the 21st street and the 99th street time books here in Court. I brought them here this morning, and they are all in Court.

Mr. Ransom: Both these have been produced and have been examined by counsel for the de- 4887
fendants.

Mr. O'Brien: You called them the original books.

The Master: Don't answer that question.

Mr. O'Brien: The statement was indistinct.

The Master: You are out of order.

Mr. O'Brien: May I ask the stenographer to read the answer?

4888 The Master: Yes.

(The answer was read by the stenographer.)

Mr. O'Brien: Who asked that?

The Witness: This gentleman here (indicating).

The Master: Mr. Chambers?

Mr. O'Brien: Mr. Chambers.

The Witness: Yes.

Mr. O'Brien: And what was the rest of the answer, please?

(The balance of the answer was read by the stenographer.)

4889 Mr. O'Brien: Your Honor, I note an exception to that statement.

Mr. Chambers: Not examined. I looked at them here for five seconds, about.

Mr. O'Brien: I have not seen them.

The Master: Well, they are in court, that is all I know about it. What is the next question?

Q. Now, what other items having to do with the manufacturing stations appear in these ledgers, aside from coal and oil? There are various sundry items of expense that are paid through the central

4890 office?

A. Why, the ledger shows what is in here, Major. There is postings of labor; there are postings of coal; there are postings of oil; there are postings for miscellaneous material; there are postings for cartage used at the stations in connection with production and in connection with handling spent oxide. The record speaks for itself.

Q. Well, the miscellaneous materials, what do those include? Do you mean items that are pur-

chased by the central office and assigned to one 4891
station and another?

A. There are small items of material, oil, waste, packing and items of that sort bought through our regular purchasing department system and records maintained at the station when the material was received and receipt vouchers sent over to the accounting department and made part of the record.

Q. Is a book kept at the manufacturing station of these miscellaneous material items similar to that kept of coal and oil?

A. There is.

Q. There is a book for that also?

A. The receiving clerks keep a record of those 4892
items.

Q. And as to cartage, there is also a book kept in each manufacturing station to show any cartage done?

A. Yes, upon which a report comes to the accounting department and records so many hours for each kind of work and it results in an entry to this account.

Q. That includes all of the items that refer to manufacturing plants?

A. That is all——

Q. (Interrupting) Those we have touched on? 4893

A. That is all that we have.

Q. Now, in regard to the commercial branches, you have the items of the miscellaneous accounts which are handled in what way, in the commercial branches?

The Master: Oh, that has been fully covered, Major. I won't permit anything more on that. We had all these sheets, with five sections on a sheet——

4894 The Witness: Seven sections.

The Master: Yes, seven sections on a sheet, divided into the greatest kind of detail. I carried him through from item to item on it. He had five different books or sets there,—seven.

The Witness: Seven different sets, I explained in great detail.

The Master: There are five customers' accounts on a sheet—or thirty-five——

The Witness: Thirty-five.

The Master: And there was seven different sets of books there?

4895 The Witness: Yes.

The Master: That is perfectly clear in the record.

Q. Now, with the exception of these manufacturing and commercial departments, what other entries will appear in the ledger, Mr. Brundage, any except transcripts from the journal, or are they all transcripts from the journal?

A. I don't follow your question, Major. Say it again.

Q. What entries will appear—what are the sources of the entries in this ledger?

A. That I can answer specifically. Your ques-
4896 tion is, What are the sources of the entries in this ledger?

Q. Yes.

A. Payrolls, sundry creditors' vouchers, petty expense vouchers, journal entries.

Q. Now, the sundry creditors' vouchers, the entries in the ledger are made up from that book that is known as Sundry Creditors' vouchers approved, is that correct, or invoices approved?

A. In so far as the sundry creditors' bills are 4897
concerned, yes.

The Master: I think we have been all over that.

The Witness: We have.

Mr. Clark: We didn't quite bring out the point, your Honor, that the sundry creditors' vouchers were not used in connection with these entries. The vouchers themselves are used to make up the book that is known as invoices approved, and the book that is known as invoices approved is used to make up the operating ledger. 4898

The Master: Just ask the question. You want to have in mind, and I suppose you have, that you are at perfect liberty to ask a leading question to bring out that point quickly.

Mr. Clark: I think I just did ask that question.

The Witness: Now, your question, Major, in respect to these sundry creditors' vouchers, as I understand it, is, How are they posted into this ledger?

Q. Yes.

A. They are recorded in what is known as a record of invoices approved, which is in the record 4899
in the case as an exhibit.

The Master: It is marked for identification.

The Witness: Yes.

The Master: Then it is carried from that into the ledger?

The Witness: Posted from that record into this ledger, your Honor.

The Master: So that I take it your conten-

4900 tion is that it is the invoices approved record that is the original book of entry, and not this

Mr. Clark: Of the vouchers approved.

Q. From the time it is entered in the invoice ap proved they have not been paid?

A. Sometimes, usually not. There might be a item.

Q. That book as a general rule would not be, i your mind, proof of payment?

A. No, sir. The proof of payment is the cas book, and of course the payment is recorded o each individual voucher, showing the date of pay

4901 ment and the check numbers that paid it.

Q. Now, the journal entries are the bulk of the made from the monthly reports that come in t you, is that correct?

Q. That is the bulk of the journal entries a made on the first of the month or shortly ther after?

A. Yes, sir, about the first of the month. Th journal entries are based, as I have testified t on these monthly reports, and as soon after th first of the month as possible these various journa entries are made, and this ledger posted from ther

Q. These monthly reports are in turn made u from books or other records in the various depar

4902 ments of the company's———

A. Which are made contemporaneously.

Q. Which are made contemporaneously with th events which they record?

A. Yes.

Mr. Clark: I don't think I have any furth questions.

The Master: I don't think you have either.

By Mr. Chambers:

Q. Mr. Brundage, at each of these little plan you have a superintendent?

4903

The Master: That has been fully covered.

Q. Well, who has sole charge of the plant?

The Master: I won't permit it. It has been fully covered.

Mr. Chambers: Well, I take an exception.

The Master: Yes.

Q. And it is to him that you look for the approval of everything that goes on in his plant?

The Master: The question is not allowed as having been fully covered.

Q. Now you spoke of a time book or field book which you brought here in court?

A. I did, and I brought 21st Street and 99th 4904
Street stations here for inspection.

Q. Now, each of those separate works or plants has such a book?

A. They have.

Q. Which is kept permanently there?

A. Yes.

Q. And it is made up by the foreman or timekeeper for that plant?

The Master: That has been fully covered. I won't allow any more questions on it.

Mr. Chambers: Exception.

Q. Now, that is always retained at the works, that original book?

4905

The Master: You need not answer that. It is fully covered.

Q. Then you make out from that book what are known as weekly cards?

The Master: That has been fully covered. I am not going to permit any questions on it.

Mr. Chambers: Well, has it been?

The Master: It has.

4906 Q. Did you state who the cards were made up by?

The Master: He did.

Q. Did you say who they were signed and approved by?

The Master: He did.

Q. Well, was it by the superintendent?

The Master: I won't permit any further questions either of the witness or the Master. The Master is ruling on these questions.

Mr. O'Brien: Will your Honor permit me to inject here?

The Master: No.

4907 Q. Now, did you say how the pay roll was made up?

The Master: He did, and I won't permit any further questions on it.

Q. Did you say who checked and approved the pay roll?

The Master: You need not answer that question.

Mr. Chambers: Exception. An exception to all of these refusals.

The Master: Certainly.

Q. Then it is sent to the treasurer's department for payment, isn't it?

4908 The Master: You need not answer that. Now, don't let us waste any time on this, Mr. Chambers.

Q. In what form is the pay roll, is it a permanent record?

The Master: You need not answer that.

Mr. Chambers: I take an exception.

The Master: You don't want to ask a lot of questions that are so long drawn out. We have

got a picture as clear as a bell that these books 4909
that are now in evidence come from other records.

Mr. Chambers: Well, he concedes that.

The Master: I don't care what he concedes.

Mr. Chambers: This is not an original record at all.

The Master: I know that already.

Mr. Chambers: And the other books show that.

The Master: That is in the record already.

Mr. Chambers: Well, possibly.

The Master: Look over the record and see 4910
if I am not right. Take the last session and see if you find everything is not covered there.

Mr. Chambers: Well, that is all I care about, if it has been covered clearly.

The Master: I want you to have it covered. I know your point.

Mr. Chambers: It is the basis of my objection.

The Master: If you come in in the morning and say I was mistaken about any one of these things being covered, I will allow you to ask the question, or if you say now that it is not covered, I will permit you to ask it. 4911

Mr. Chambers: Do you mean by Major Clark, or in the direct?

The Master: No, it was covered by yourself by the witness, not volunteered by the witness, but my recollection is just as clear as it can be upon any thing that it is clearly upon the record that each station has these time books, these records, these receipts of merchandise,

4912 the taking out of merchandise, that it gives us 17 different kinds of reports from which entries are made, and it is just as clear as it ever can be made that in that sense these books simply summarize items in other records and cards.

Mr. Chambers: Yes, but this is a clearing house for a lot of little junk piles.

The Master: Yes, but it is very clear.

Mr. Chambers: It is like ten banks, and here is a central association for the clearing house for the ten banks.

4913 The Master: I want you to have the clearest kind of a record, and all I ask you to do is to look over last Wednesday's minutes and if you don't think any particular matter is covered, have in your mind the foundation you want to lay for your objection, I will let you ask it.

Mr. O'Brien: I have in mind a branch of the situation——

The Master: You look over the minutes and see if it is not covered.

Mr. O'Brien: The question of gas bought and the record of where and how it is measured, the quantities which were bought and

4914 sold between the various affiliated companies.

The Master: I will adjourn the hearing until to-morrow at ten o'clock.

Adjourned to Tuesday, August 19, 1919, at 10 A. M.

Last Complainant's Exhibit—200.
Last Defendants' Exhibit—T.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 4915

Before Abraham S. Gilbert, Special Master.

New York, August 19, 1919.

Met pursuant to adjournment.

Present: Mr. Ransom, Mr. Vilas, Mr. Goetz, of Counsel for Complainant
Mr. Chambers, of Counsel for defendant Newton
Mr. Hayward and Mr. Clark, of 4916
Counsel for Public Service Commission
Mr. O'Brien, of Counsel for defendant Swann.

Henry M. Brundage resumed the stand.

Cross-examination by Mr. Chambers:

The Master: Mr. Chambers, are there any further questions you want to ask?

Mr. Chambers: Yes. I have just gotten the 4917
minutes; I did not see what took place yesterday, but Major Clark and I agreed that this was not brought out.

By Mr. Chambers:

Q. Will you state, please, the way you handled oil, the manner in which you showed us the other day up at the 15th street office? Do you remember you and Mr. Maltbie were discussing and

4918 figuring out the method in which you handled the oil?

A. The record of oil you mean?

Q. No, the price of oil; for instance, if you had a million gallons at 8 cents a gallon and a million gallons at 5 cents a gallon, you found the average price of the two million gallons; is that right? You remember. State the method pursued by yourself in that regard.

A. I thought that I had put that on the record yesterday, counsellor, but if it is not perfectly clear, I will be glad to do so. We work out an
4919 average price of the oil in the tanks, continuing up to the end of a calendar year. Oil contracts expire at the end of the calendar year, and in January we compute the balance of the oil delivered under the old year's contract and the balance as drawn from the new year's contract.

Q. Who made this calculation?

A. Why, it is made in the accounting department, counsellor.

Q. By yourself?

A. No.

By the Master:

Q. In other words, as I understand it, Mr.
4920 Brundage, if, during the year 1918, there was delivered oil at $1 a gallon, and you had a certain quantity of that oil on hand, and then in 1919 you bought oil at $2 a gallon, you would average the amount that the oil in the tank cost you as between the 1918 and 1919 prices?

A. When we made up our January 1919 computation we would work off the oil that was presumed to be in the tank under the 1918 price until it was exhausted, and the balance of the oil would be taken out of stock and charged at the 1919 price.

Q. So you don't average it?

A. We average it at the year, but it is done at 4921
the end of the year.

Q. In other words, at the end of the year, having figured the amount of oil you had on hand, the amount of production you got from it, and the cost of your production, then taking the balance of the one, the amount of oil you got and the cost of your production, you would average the cost of the production for the year?

A. I would not put it that way. As of January 1st, let us say, we had a certain quantity in our tanks, and we began in January to take oil in at a new price, we would charge into production and 4922
credit our oil stock to the extent of the oil that was in the tanks as of January 1st at the old price, and then the balance of the oil used in January would be charged in at the 1919 price.

Q. Am I not right then that for some days in January the cost of your production would be higher or lower dependent upon whether the price of the oil had gone up or down?

A. Yes, if we made up our accounts by the day it would.

Q. Assuming that you had enough oil to carry you during the month of January, and that that oil cost you one dollar a gallon—— 4923

A. We would use the 1918 price.

Q. And assuming that the new price was one dollar and fifty cents a gallon, the cost of your production for January would be less than it would be in February?

A. Yes, sir.

Q. And at the end of the year you average it throughout the year?

A. Yes, sir.

4924 By Mr. Chambers:

Q. Now, you have said already that there is a superintendent in charge of the 99th Street Works?

A. There is.

Q. What is his name?

A. DeCastro.

Q. Has he been there a number of years?

A. I should say not to exceed a year or so.

Q. And he is there now?

A. He is.

Q. And his predecessor, is he alive and around?

A. Yes.

4925 Q. He is there is he, or where is he?

A. No, his predecessor is the superintendent of the Twenty-first Street plant.

Q. And he has been with the company a number of years?

A. Yes.

Q. And is available?

A. He is still in the employ of the company.

Q. Now, the Twenty-first Street plant, the superintendent, what is his name?

A. Mr. Barlow.

Q. And he has been with the company a number of years?

4926 A. He has.

Q. And he is now alive and available, is he?

A. Yes, sir, so far as I know.

Q. How about the Fourteenth Street Works, is there a superintendent of that plant?

A. Well, I confess I don't know the superintendent's name at Fourteenth Street.

Q. Well, he has been with the company a num- 4927
ber of years?

Mr. O'Brien: Is it Ritchie?

The Witness: Oh, yes, A. V. Ritchie.

Q. He is still alive?

A. Yes, as far as I know.

Q. How about the Forty-second Street plant. Do you remember the superintendent's name of the Forty-second Street plant?

A. No, I don't remember.

Q. He has been with the company a number of years?

A. I assume so. 4928

Mr. Ransom: Is it Kellogg at Forty-second Street?

The Witness: Yes, R. M. Kellogg.

Q. Is there a superintendent in charge of the Sixty-third Street holder station?

A. The operations of the Sixty-third Street holder station are directed from the Forty-second Street station.

Q. So the superintendent of the Forty-second Street station would have charge of that?

A. Yes, he has jurisdiction of those holders.

Q. How about Forty-fourth Street holder station, who is is charge of that? 4929

A. The same man that runs Forty-second Street.

Q. How about the Seventeenth Street holder station, is that in charge of a superintendent?

A. The Seventeenth Street holder is in connection with the Fourteenth Street station, comes under the superintendent of the Fourteenth Street station.

4930 Q. So that the superintendent of the Fourteenth Street station would be the superintendent of that?

A. Yes.

Q. How about the holder at One hundred and Eleventh Street?

A. One Hundred and Eleventh Street comes under the jurisdiction of the Ninety-ninth Street superintendent.

Q. How about the One Hundred and Thirty-second Street and Locust Avenue testing tunnel station, whose superintendency is that under?

A. One Hundred and Thirty-second Street East?

4931 Q. Yes, the tunnel, the so-called Astoria Tunnel. Do you want to see it on the map?

A. No.

Q. Do you know under whose superintendency that is?

A. That is in the meter department.

Q. The Fifteenth Street meter shop has that under its superintendency?

A. That is annexed to the meter department.

Q. Is there a superintendent there?

A. Yes.

Q. What is his name?

A. I don't know.

4932 Q. Has he been with the company some time?

A. He has, he has been with us for years.

Q. How about the Fordham Road and Harlem River holder?

A. That comes under the jurisdiction of the Ninety-ninth Street superintendent.

Q. He is in charge of that?

A. Yes.

Q. Who has charge of the Hester and Elizabeth 4933
Street branch office?

A. It comes under the direction of the general superintendent of the commercial department.

Q. Has he been with the company quite some time?

A. Yes.

Q. Who is he?

A. Mr. Barnitz.

Q. Who has charge of the 57th Street branch office?

A. That comes under the general superintendent of the Commercial Department, Mr. Barnitz.

Q. And he has been with the company, you say, 4934
a number of years?

A. Yes.

The Master: Don't they have a superintendent in charge of each branch?

The Witness: They do.

The Master: Who is the man in charge of the Hester Street branch?

The Witness: Well, one of our old employees, I will think of his name in just a minute.

The Master: Well, you don't remember his name just now. Who is in charge of the 57th Street branch, an old employee? 4935

The Witness: Yes. All the branch superintendents have been with us for a long while.

Q. How about the 66th Street holder station meter shop?

A. Which one?

Q. The 66th Street?

A. The 66th Street, there is a shop and also a street department.

4936 Q. Is that in charge of a superintendent?

A. Yes.

Q. What is his name?

A. The 66th Street department comes under the direction of—the immediate direction—well, let us go to the shop, I know that man. The 66th Street meter shop is run by a superintendent by the name of Murray.

Q. He has been with the company for some time?

A. Yes, a long while.

The Master: Is there a holder station up there too?

4937 The Witness: No.

Q. Well, it is so marked in here?

A. No. There are holder stations at 65th Street, and that comes under the direction of the 42nd Street superintendent.

Mr. O'Brien: What is Murray's first name?

The Witness: F. X.

Q. Who is in charge of the street department?

A. I am trying to recall that man's name.

Q. I mean your general superintendent?

A. Oh, general superintendent of the street department?

A. Yes?

4938 A. C. C. Simpson.

Q. He is alive, is he?

A. Yes.

Q. He has been with the company some time?

A. Yes, sir.

Q. Who is in charge of your entire meter equipment or——

A. The meter shops?

Q. Yes, general superintendent?

A. The general superintendent of our meter 4939
shops has recently died, and Mr. A. E. Turner is now in charge, the old assistant superintendent of all the meter shops.

Q. Has he been with the company for some time?

A. Oh, yes.

The Master: Was he an assistant before?

The Witness: He was assistant general superintendent, your Honor.

The Master: Of meter shops?

The Witness: Of the meter shops.

Q. You don't think that any of the superinten- 4940
dents—you have three street departments?

A. Yes.

Q. And they are under the direction of——

A. Mr. C. C. Simpson.

Q. Well then, he has sub superintendents?

A. He has sub superintendents.

Q. But Mr. Simpson is the head?

A. He is the general superintendent, we call him.

Q. Each of those have their own books, each of the three divisions?

A. They keep the records that I have already testified about.

Q. You can't think of anybody, any of those 4941
superintendents, with the exception of the predecessor of Simpson, who has been with the company for a number of years, can you?

A. I haven't said anything about Simpson.

Q. You said that he was dead?

A. No, that is the meter department. Mr. Kelly was superintendent for a number of years, and he recently died and Turner took his place.

4942 By Mr. O'Brien:

Q. Kelly is dead?

A. Yes, sir.

Q. When did he die?

A. I should say about between three and fo
months ago.

Q. Why, you mean Mr. Kelly up 111th Street,
the meter department up there, in charge of
meter department?

A. No, Mr. William D. Kelly of the general offi
general superintendent of meters for many yea

Q. Well, you have got a Kelly at 111th Stre
4943 haven't you, or have you?

A. I don't know a Kelly at 111th Street.

Q. You don't know Mr. Kelly in charge at 11
Street?

A. No. Mr. Cornine is in charge there.

Q. Well, I mean Mr. Cornine's assistant?

A. Yes.

Q. You never knew of him?

A. Not on our pay roll, sir.

Q. He is not on your pay roll?

A. No, sir.

Mr. O'Brien: Well, your Honor, that o
shows, the examination yesterday and to-d
4944 how much this man can verify the books of t
company.

Mr. Ransom: You are up to your old ga
of testifying again, Mr. O'Brien.

Mr. O'Brien: No, I am not testifying agai

The Master: Let me say something. I do
know anything about it, but the chances
are that you have got the man's name wro

and that Mr. Brundage is right. Now, those 4945
are the probabilities of the situation.

The Master: My impression is that Mr. Brundage probably knows the name of the assistant. Do you remember the name of the assistant up there, Cornine, or whatever his name is?

The Witness: I have a hazy recollection, your Honor, that there is a man named Frank Kelly up there. He is not a Consolidated employee.

Mr. O'Brien: You have a hazy recollection of him?

The Witness: I have.

4946

Mr. O'Brien: He is not on your payroll?

The Master: Apparently he belongs somewhere else.

Mr. O'Brien: No, your Honor, he does not. I will go on the stand myself and testify.

Mr. Ransom: You are testifying more yourself than anybody else, anyway.

By Mr. Chambers:

Q. Let us make a clean up of this.

A. Yes.

Q. With the exception of Kelly, whom you spoke of, who is dead, who was superintendent of the meter shop, can you think of a single superinten- 4947
dent or sub-superintendent, or whatever you call them next in order down the list, who has not been with the company for many years?

A. No, I cannot.

Q. In other words, do I correctly represent you when I say that all of the superintendents of all of the various departments and works and sub-super-

4948 intendents, with the exception of Mr. Kelly, h
been with the company a number of years?

A. Yes.

Q. And are still with the company?

A. Yes.

Mr. Chambers: I think that is all, if y
Honor please.

The Master: Has anybody else any q
tions?

Mr. O'Brien: Your Honor, the branch of
subject that has not been touched on, I w
say one branch, but I have in mind seve
There is one point particularly that was
4949 included in the generalization in the dir
examination of the witness.

The Master: What is the point?

Mr. O'Brien: Purchases of gas from ot
companies. The cursory examination I m
of the records indicates that thousands of
lars are paid out monthly to the various a
ated companies for gas bought, and then
turn these affiliated companies pay money
gas sold. There is not anything to indi
what record is kept of that, or where the re
is kept; how the gas is measured, who is
4950 sponsible for it and how the reports upon t
subject come into the main office.

The Master: I will let you ask a few q
tions, sufficient to develop that point.

By Mr. O'Brien:

Q. The complainant company, Mr. Brunda
purchases gas from various companies?

A. Yes.

The Master: And sells gas to various c
panies?

The Witness: Gas is manufactured by com- 4951
panies for each other.

Q. Won't you give us a direct answer?

A. You used the term "purchase", counsellor.

Q. Well, I will get the treasurer's book, and these entries are on both the debit and credit side. And let me make it very clear on that.

The Master: I think I get the witness's point. Gas is made for the Consolidated Gas Company by other companies?

The Witness: Yes.

The Master: For which the Consolidated pays?

4952

The Witness: Yes.

The Master: Does the Consolidated furnish gas to other companies for which they pay the Consolidated?

The Witness: The Consolidated manufactures gas for other companies for which they pay.

The Master: For which they get money?

The Witness: Yes.

The Master: Mr. O'Brien wants to know how those records are kept and how you fix the prices.

Mr. O'Brien: First I want to find out what 4953
the companies are.

The Master: Go ahead in your own way. I think we can assume that the Standard and Mutual and the others mentioned.

Q. You sell gas to the Westchester Lighting Company?

A. We do not.

4954 Q. You say that no gas is sent to Yonkers from the Fordham station?

A. Not that I have any knowledge of from the Consolidated accounts.

Q. Name the companies to whom the Consolidated Company sells gas and the companies from whom the Consolidated purchases gas?

Mr. Ransom: You are referring now to 1918?

Mr. O'Brien: All of our examination is on 1918.

A. The Consolidated bought gas during the year
4955 1918 from the Astoria Light, Heat & Power Company.

Mr. O'Brien: I will ask that the witness not refer to any paper.

The Master: I will let him refer to any paper he wishes to.

Mr. O'Brien: I am testing his knowledge of these books, your Honor, and his knowledge of the company.

The Master: I will let him answer and refer to his report. You are referring, Mr. Brundage, to a copy of the Annual Report filed with the Public Service Commission?

4956 The Witness: I was.

The Master: Can you state without referring to this?

The Witness: I believe I can.

The Master: Go ahead.

The Witness: The Consolidated bought gas —buys gas from the Astoria Light, Heat & Power Company. Gas is also transferred between the Consolidated, the New Amsterdam, the Standard and the Mutual.

Q. You changed your verbiage there just now. 4957
You say it bought gas from the Astoria?

A. Yes, sir.

Q. It transferred gas to the other companies?

A. Yes, sir.

Q. Do you mean it does not buy any gas from the other companies?

A. I mean in respect of the Manhattan companies, gas flowed to the Consolidated and from the Consolidated.

Q. And it is arranged in the accounting system to indicate purchases and sales?

A. It is arranged to indicate gas manufactured 4958
for account of the other companies.

Q. For account of them?

A. Yes, sir. Now, in the Astoria case we buy all the gas that they make.

Q. You take all of their output?

A. Yes, sir.

Q. The other companies, how is that arranged as an accounting matter?

A. I suppose, probably, counsellor, I could draw it on a chart for you here more easily than I could explain it in good language.

The Master: Do it the best you can in ex- 4959
plaining it so the stenographer can get it on the record.

The Witness: I want to have you see it too, your Honor.

Mr. Ransom: He can put the chart in evidence.

The Witness: All right.

Mr. O'Brien: I want the explanation in words, your Honor, in English, just like that

graphic direct-examination. I do not want a picture of it.

The Master: We will get it.

Q. You are opening a set of books, Mr. Brundage?

The Master: You might let him alone for a minute.

Mr. O'Brien: This is for the record. I am not talking for fun.

The Master: No, I will let him make any memorandum he wishes; then when he gets through we will find out what he has done.

Mr. O'Brien: This, your Honor, I take it, is one of the vital parts of this case. Your Honor will find that out as we get further in.

The Master: We are not going to run away from it without finding out all about it.

Mr. O'Brien: I want something more than a picture.

The Master: Well, we will have something more than a picture. I think when Mr. Brundage gets through with this it will be Greek to all of us, until he tells us what it is all about. Read the question.

Q. And the other companies, how is that arranged as an accounting manner?

A. (After making drawing): Let us take first, counsellor, the gas manufactured by the Astoria Company and sold with the Consolidated. In that case the arrangement between the companies provides that the Consolidated shall pay for that gas the Astoria Company's total operating cost plus 7% upon the Astoria Company's investment in the gas business. Bills are rendered——

Q. Seven per cent of the whole investment?

A. Seven per cent of the Astoria's investment 4963
in the gas business.

Q. Including land?

A. What?

Q. The whole property of the company?

A. Including the property. Bills are prepared by the Astoria Company monthly and rendered to the Consolidated, who confirm from the Astoria Company's records the accuracy of the bill, and who pass it through their accounts for audit and payment. When we come to the Manhattan companies——

The Master: By that you mean what? 4964

Q. Name the companies, will you, Mr. Brundage?

A. The Consolidated, New Amsterdam, Standard and Mutual. Those are the four Manhattan Companies, your Honor. A computation as I lay out here is then made. We first take the make of these companies, which is a matter of record in the engineering department. We next list the gas accounted for. That comprises two factors, the gas actually sold and the gas used by each of the companies in their own offices and stations. The difference between those two is the gas unaccounted for. Now, of that gas unaccounted for, 4965
it is computed that 3% of that unaccounted for is due to condensation and flow meters, and a computation is made up of three per cent of the accounted for and listed here. That still leaves unaccounted for, due to leakage and possibly some other causes and as a result of that computation we determine in our last column here that I have marked "Total", the total requirements of each

4966 company. I might go back a step where I have missed.

Q. You have not said anything about the amount that comes to the Consolidated from those companies.

The Master: No, he has not come to that yet.

The Witness: I have missed one step here, your Honor, that I would like to explain—that this leakage we know in total, that is the total make applied against the total accounted for leaves unaccounted for, and of that unaccounted for it is computed that three per cent.
4967 is due to condensation and slow meters. Now, the unaccounted for leakage we only know in total for all the companies, and that total is pro rated amongst these companies, based on their main mileage, with the result that at the end of the table, as I will show you here, we know the total make of each company and the total requirements of each company, and the total make applied against the total requirements gives a debit or a credit. That is to say, a company with a station producing a certain make during the month and having a
4968 certain requirement during the month would be either over or under in respect of its make. It might require more than it made or less than it made.

Q. Right here, state what you mean by requirement.

The Master: Let me ask a question; I think I understand it. In other words, you do not meter in any form or measure in any way a lot

of gas that flows from other companies to your company? 4969

The Witness: We do not, your Honor.

The Master: Or from your company to other companies?

The Witness: No, sir.

The Master: Except by figuring the total amount of gas made by a company?

The Witness: Yes, sir.

The Master: The total amount of gas it has left in its holders.

The Witness: Not quite that way. The total gas made is one factor. 4970

The Master: In order to find the unaccounted for gas you have to find out how much is on hand, don't you?

Mr. O'Brien: By the consumers' meters. That is how they get that.

The Witness: No.

Q. Don't you get that, the difference between the company's meters and the consumers' meters?

The Master: Let me put it my way. On the 1st of January, 1918, there was gas in all of the holders, wasn't there?

The Witness: There was. 4971

By the Master:

Q. That is taken into account, isn't it?

A. Not for this purpose, your Honor.

Q. Do you exclude that?

A. Yes, because the variation in the quantity of gas on hand spread over a year's business for a concern of its size is so infinitesimal you could not express it except in a long decimal. So they deal with the actual amount the station made.

4972 Q. So if, for instance, the New Amsterdam, talking in comparatively small figures, I take it, made a million feet of gas in a year and it allowed for the leakage and unaccounted for gas, you find they, in fact, used a million and a half gas during the year, then you assume that half a million gas comes from the Consolidated?

A. Yes, there is a debit and credit for the company. If they had not made enough to take care of their requirements, in that case they have to be billed.

Q. How can we tell that that comes from the
4973 Consolidated?

A. You cannot tell it from this.

Q. Then when I analyze that down, if, for instance, the New Amsterdam is over and the Standard is under, and the Mutual is over, and the net result is that between those three companies they have made the amount of their requirements, no more and no less, you figure the Consolidated owes them nothing, and they would owe the Consolidated nothing?

A. That would work out that way, yes, sir. But there is always a debit and credit, and the Consolidated is the clearing house.

4974 Mr. Chambers: You say it comes from the Consolidated. You mean comes from the Astoria.

The Witness: No, I do not.

Mr. Chambers: When you say the Company makes a million and uses a million and a half, you say the other five hundred thousand comes from the Consolidated?

The Witness: That is what I meant.

Mr. Chambers: Isn't it from the Astoria, not the Consolidated? 4975

The Witness: I have already explained to Counsellor O'Brien that the Consolidated buys all the gas the Astoria makes and for this computation we include that.

Q. Then you get the amount that comes from the Astoria plant?

A. We do.

Q. Because there is nothing flowing back and forth; it is in one direction. If the Astoria made a million feet of gas and it came through that pipe, it is the amount that comes through that pipe to the Consolidated pipes that they pay for? 4976

A. Yes, sir.

Mr. Chambers: You take all they make over there?

The Witness: We do.

Mr. Chambers: And sell it out?

The Master: And the amount that comes through is measured at the meter house.

Mr. O'Brien: Just right here, Mr. Brundage, what are the proportions of the total gas sold by the Consolidated to the gas bought by the Astoria?

A. I can give you those figures. 4977

Q. Just approximate.

The Master: Consulting your records.

Q. Can you do it without consulting your records?

A. No, sir.

Q. Can you approximate it without consulting your records?

A. No, I would not attempt.

4978 Q. Would you say four-fifths of the total amount is sold by the Consolidated——

The Master: He says he cannot do it.

Mr. O'Brien: This is all on the man's knowledge of the Company's business.

The Master: I am ruling now. You are asking him to approximate the amount of gas sold as compared with the amount received from the Astoria. He says he cannot do it. There is no use asking him whether it is four-fifths or three-eighths or what.

Mr. O'Brien: I want to bring out there this
4979 witness' lack of knowledge of the books that they are trying to verify and are trying to put into this case.

The Master: I do not think you can do it that way. He is not expected to have those things in his mind.

Q. Can you say, taking the business of 1918, how much was paid to the Astoria Light, Heat & Power Company for gas?

The Master: Without looking at your records?

Mr. O'Brien: I do not mean in exact figures.

4980 A. No, I would not attempt to.

Q. In round figures?

A. I would not attempt to.

Mr. Chambers: How long has the Consolidated taken all the gas of the Astoria plant?

The Witness: Since the Astoria plant first began to operate, counsellor. About 1906.

Q. Now, will you proceed with the answer then as his Honor dictated the record over my objection? 4981

The Master: What was that?

Mr. O'Brien: To give us the figures.

The Master: From the record.

Mr. O'Brien: Yes.

The Master: The total amount of gas sold as compared with the total purchased from the Astoria.

Mr. Ransom: I should be willing that the witness put in the entire 1918 figures in that respect.

Mr. O'Brien: I just want the generalization. Just the facts. 4982

Mr. Ransom: I would rather have it the other way.

The Master: I am not going to permit any further cross on this. I just permit a line of questions to show what these books would indicate as to this transfer of gas.

Mr. O'Brien: I have not brought out the point yet, your Honor.

The Witness: In answer to your question, the Consolidated Gas Company's cubic feet of of sales during the year 1918, were 18,029,245,000 cubic feet. During that same year—— 4983

Q. Is that the make?

A. That is the sales of cubic feet. During the year 1918, the Consolidated bought from the Astoria Light, Heat & Power Company 9,645,584,400 cubic feet.

Q. That would mean how much was secured from the other companies?

4984 A. Approximately one-half of it from the Astoria, Mr O'Brien.

Q. One-half of its output was bought from the Astoria?

A. One-half of its sales was bought from the Astoria.

Q. And the rest, then, we may assume was either made by the complainant company itself or was secured from the companies you have referred to?

A. Yes.

By Mr. O'Brien:

Q. Well now let me have in brief answer as you
4985 may how it is determined whether the affiliated companies, the New Amsterdam—I am talking about the Manhattan companies—the Mutual, the Standard, and what was the fourth?

A. That is all.

Q. How it is determinated how much they owe the complainant company?

A. I have just explained to counselor how we compute the number of feet. The price is the station cost of the producing company plus 10 per cent.

Q. Plus 10 per cent?

A. Yes, station cost plus 10 per cent.

4986 Q. Plus 10 per cent of the value of the plant?

A. No, 10 per cent of station cost, actual station cost plus 10 per cent.

Q. Plus 10 per cent of the station cost?

The Master: Cost plus 10.

The Witness: Cost plus 10.

Q. And in the Astoria plant how is it?

A. Cost plus 7 per cent on the investment.

The Master: As distinguished from cost,

plus 10 per cent of the cost in the other com- 4987
panies?

The Witness: Yes.

Q. To compute the amount owing the complainant company by the Manhattan companies, you take first the make of those companies as indicated by their records, and then you take the amount accounted for as shown by the records of those companies, gas sold, is that it?

A. And gas used by the companies in offices and stations.

Q. And you determine the amount unaccounted for? 4988

A. Yes.

Q. Then you add 3 per cent. to the amount unaccounted for, or you charge up 3 per cent. of the amount unaccounted for to condensation?

A. I would not quite put it that way, counsellor, I would say that of that unaccounted for it is believed that 3 per cent. is due to slow meters and condensation.

Q. That is a norm or a coefficient that you have been using for a number of years?

A. Yes, it is an engineer's computation.

Q. It has been in vogue for a number of years with the company? 4989

A. Yes.

Q. The same percentage?

A. Yes.

Q. And then you compute the leakage in what way?

A. The total unaccounted for less the percentage believed due to condensation——

Q. As per the coefficient that has been in use for a number of years?

4990 A. Yes. That leaves the balance unaccounted for.

Q. And you call that leakage?

A. We call that leakage.

Q. Then what do you subtract from leakage?

A. There is nothing more to subtract, when you get to that point you are through, you have accounted then for all of your unaccounted for.

Q. I see. Then you have here on this chart that you have drawn, first the make, secondly the accounted for, third the unaccounted for, fourth, the per cent. for condensation and slow meters, and
4991 lastly the leakage, or the balance unaccounted for?

A. Yes, the balance we cannot account for.

Q. In which one of these columns is included the amount sold to the Consolidated Gas Company?

A. None of them. You have not gone far enough in that statement.

Q. Well, you have a column called total?

A. Yes.

The Master: That is the total make?

The Witness: That is the total requirements of the companies, and the total requirement of each company, compared with the total make in the first column of each company, gives the
4992 amount for which each company is either debited or credited.

Q. Where do you get the accounted for?

A. The accounted for is shown in the second column, and represents each company's actual sales plus the gas used by themselves in their offices and station.

The Master: The gas used by themselves is metered?

The Witness: It is. 4993

Mr. Ransom: I call your Honor's attention to the fact that this is away outside of the books.

Mr. O'Brien: No, it is not, your Honor. I am just a bit confused about that. Will your Honor let me finish this up?

The Master: Mr. O'Brien, it seems perfectly clear to me. Here is the situation as I understand it. They buy from the Astoria Gas Company, and are the only customers of the Astoria Gas Company.

Mr. Ransom: They take all the send-out of 4994
the Astoria.

The Master: That gas comes from the Astoria plant through their tunnel, and is metered and measured when it gets to 132nd Street.

The Witness: It is metered at Astoria.

The Master: It is metered and measured somewhere before it flows into the pipes of the Consolidated Gas Company?

The Witness: Yes.

The Master: Now, after that gas is measured in that way they pay the Astoria Gas Company the cost of production plus 7 per cent. on the invested capital of the Astoria Gas Company, 1995
whatever that amount may be. Now, that disposes of that and is not on this chart at all.

The Witness: Except that in that first computation, where we deal with the Consolidated's make, we have to take in this Astoria Gas.

By the Master:

Q. Now, starting with the Consolidated Gas Company, including the amount that they actually

4996 make in their plants, and the amount that they get from the Astoria Gas Company, you have a total amount of make, so-called, by the Consolidated?

A. That is right.

Mr. Ransom: Or sends out, which is it?

The Witness: Make.

Q. Now, you have three other companies between whose plants and the Consolidated there is an interchange of gas?

A. Yes, sir.

Q. And what you do is by the records in conjunction with records kept by the other companies, you
4997 find out what the make of the other companies was, and their requirements, including the gas they sell and the gas they use, the leakage and the condensation and slow meters?

A. Yes, sir.

Q. And you debit or credit each company in accordance with their records?

A. Yes.

Q. So that if the Amsterdam Company showed that their make was one million cubic feet, and they sold one and one half million, they would be debited with that half million?

A. Correct, sir.

4998 Q. Then when we take the Mutual in the same way and we find that they are debited with a half a million, that makes a million debited against two companies?

A. That may be.

Q. Then if we find that the third company had a credit of half a million, it would mean that there was a total credit in favor of the Consolidated of half a million cubic feet, wouldn't it?

A. Yes. 4999

Q. Now, how is that divided among the other three companies?

A. This is handled, as I have explained, your Honor, by making the Consolidated a clearing house. The companies that are debtor are charged by the Consolidated, and the companies that are creditor being credited by the Consolidated.

Q. So that the company that was debited with half a million would remain debited and charged with half a million?

A. All companies that were debtor would be charged by the Consolidated. 5000

Q. For half a million feet?

A. Yes, sir.

Q. And if it was creditor?

A. It would bill the Consolidated.

Q. It would bill the Consolidated?

A. Yes, sir.

Mr. Chambers: May I ask there: How do you check up these other companies? Do you take that from their books?

The Witness: We have a representative that does that work, yes, sir.

Q. Let me ask, what price does the Consolidated Gas Company credit these companies? You have 5001 told us what they pay the companies. What price do they get from the companies?

A. When the Consolidated is billed by the other companies?

Q. Yes.

A. Based on this table indicating that the other companies gas flows to us?

Q. Yes.

5002 A. They bill us at their station cost plus 10, a
we in turn would bill the debtor company our st
tion cost plus 10.

Q. So it is the same price, give or take?

A. Yes, your Honor.

Mr. O'Brien: I see in this intercorpora
relationship you trade meters from time
time?

Mr. Ransom: I object to the question as n
within the scope of the examination.

The Master: I will allow it.

Mr. O'Brien: Oh, yes it was.

5003 The Master: Well, Mr. O'Brien, I have rul
on the question. Is there an exchange
meters?

The Witness: No, sir.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Don't you sometimes put a Consolidated me
on a service of another company?

A. I can imagine it can happen, yes.

Q. Well, you know it happens, don't you?

A. Oh,——

Q. Doesn't your memory run back to yesterd
morning, when you got in the records under
direction?

5004 A. Yesterday afternoon you asked me in resp
of a service transfer by the Consolidated to the N
Amsterdam.

Q. Yes.

A. And I showed you that that did happ
Now, you are asking me whether a meter of
company is set on another service, and I sho
say yes.

Q. Yes, that is done not altogether infrequent

The Master: Is there a charge made for t
in your books?

The Witness: No, sir. 5005

The Master: Well, how does that show up in your books?

The Witness: Well, now, let me get the thought clearly in mind that you are trying to get at, counselor.

Q. Oh, you understand me.

The Master: I am a Standard consumer.

The Witness: Yes.

The Master: And I want a meter put into my place.

The Witness: Yes.

The Master: Do I understand that I might get a Consolidated meter? 5006

The Witness: No, when you went to the Standard Company and applied for gas, the Standard would set their meter.

The Master: Well, Mr. O'Brien's question, as I understand it, had reference to the point that I am trying to make clear. I am a Consolidated consumer.

The Witness: A Standard consumer.

The Master: Yes. Will I under any circumstances get a Consolidated meter?

The Witness: You will not.

The Master: Is that what you mean? 5007

Mr. O'Brien: On what occasions do they make these transfers?

The Master: These exchanges of the meters.

The Witness: They do not exchange meters, Mr. O'Brien.

By Mr. O'Brien:

Q. Well, what did you say a minute ago?

A. Very frequently—or not freequently, but

5008 there have been cases where they have transferred services from one company to another, but the meters are bought by the company and retained in their possession, with their name on it.

The Master: Tell me what you mean by a transfer of the service?

The Witness: A transfer of service is where a service has been laid by one company and is later on sold to another company.

The Master: Well, are there sections of the city where both companies operate?

The Witness: There are.

5009 The Master: And where the mains of two companies might be in the same street?

The Witness: Yes, sir.

Q. Is there much territory of that kind, Mr. Brundage?

A. That would be a Street Department question. I can't answer that, Mr. O'Brien.

Q. Well, as reflected in the accounts, I mean.

A. Well, the Consolidated Gas Company has mains in practically every street in Manhattan Island.

Q. Does the Standard take any service off the Consolidated mains, the mains of the Consolidated

5010 Company?

Mr. Ransom: I object to the question.

The Master: I don't quite understand it.

Q. Well, the Consolidated——

Mr. Ransom: Wait a minute. I am making an objection. I object to the question.

Mr. O'Brien: I will withdraw that question and state it this way:

Q. The Consolidated has its mains in a given street?

The Master: Yes.

Q. And no other company? 5011

The Master: Yes.

Q. Now, what I wanted to ask him was whether ever the Standard or any other company passed that main for service into a house and put in their own meter for this company?

Mr. Ransom: I object to the question on the ground it is not within the scope of the cross-examination, it is an endeavor to interrogate this witness upon purely an operating matter, concerning which other witnesses will be called.

The Master: Well, if the witness knows, I 5012
will take his answer. Do you know anything about it?

The Witness: No, I would not care to testify on that, your Honor.

The Master: I think that completes the cross-examination.

Mr. O'Brien: Your Honor, I haven't come to that point at all yet.

The Master: You haven't come to your point yet?

Mr. O'Brien: Not at all.

The Master: What is your point?

Mr. O'Brien: The point is where these rec- 5013
ords are kept, it has not been explained, really, on the computations, who has charge of computing these amounts.

The Master: Do any of the books that have now been presented contain any records bearing upon the purchase of gas by the Astoria, or the exchange of gas from the Manhattan companies?

5014 The Witness: Why, yes, your Honor.

The Master: Which book?

The Witness: The operating ledger will show where bills have been rendered against the Consolidated, and the Sundry Debtor records will show where bills have been rendered against the other companies, and it is all summarized in the operating ledger, in the account called, "Gas transferred".

By Mr. O'Brien:

Q. There is an account called "Gas transferred"?

A. Yes.

5015 Q. And it has a debit and credit column?

A. Yes, Mr. O'Brien.

Q. And how often do you make those changes of accounts and render bills to each other?

A. Every month.

Q. Every month?

A. Yes, sir.

Q. And is there some officer in the company that is charged with that particular account, taking care of that account?

A. Why no, the account is kept as all the other accounts are kept, by the bookkeepers in the accounting department.

5016 Q. Is there any one man that has charge of that particular class of work?

A. No.

By the Master:

Q. How many different men handle those accounts before they are collected, going into one account?

A. Oh, they are posted in the ledgers.

Q. Yes.

A. They go through several hands. These bills 5017
are—these computations are made and the accuracy of the bill determined by one man.

Q. Does one man do the computations?

A. Yes.

Q. Always the same man?

A. Yes.

Q. What is his name?

A. A man named Nickerson.

By Mr. O'Brien:

Q. Nickerson?

A. Yes, sir.

Q. And the records I assume are in his office? 5018

A. Either in his office or Mr. Carter's office, but the bills are in the accounting department.

The Master: Only the bills?

The Witness: And the computations would be there also. He makes the computations and submits them for Mr. Carter's approval.

The Master: Well, he gets the figures on which he makes the computations from the other companies?

The Witness: He does, yes.

By Mr. O'Brien:

Q. And the office of the Astoria is in East 15th street? 5019

A. Yes.

Q. Do they render bills monthly to the Consolidated?

A. They do.

Q. Or are reports sent every week?

A. No; the Astoria accounting department is on the same floor with the Consolidated accounting department.

5020 Q. Well, how often——

A. Once a month the Astoria bills the Consolidated for the gas made during the month for its account.

Q. Then may we assume that there are no reports, statements, records, bills, or such like papers, sent from the Astoria to the Consolidated except once a month?

A. Once a month.

Q. Then you bill that gas as sold?

A. Yes.

The Master: Just as if you bought coal from somebody or oil from somebody?

5021 The Witness: Yes, sir.

Q. You just take that monthly record and from that make such monthly records as you have indicated in the complainant company's general books?

A. Yes.

Q. Now, is the 7 per cent, the base on which the 7 per cent in connection with the Astoria Company is computed, is that a fixed amount, and has it been since the company started?

A. The rate has been a fixed amount since 1906; the investment naturally has been an increasing
5022 item.

Q. Yes, and do you know what elements are included in that case?

A. All of the Astoria Company's investment in the gas business.

Q. Do you know whether it includes contingencies or such like elements?

A. Contingencies does not apply in any way, counsellor.

Q. Do you know what it is made up of? 5023

A. I have just told you, and I will say again very specifically, that it is all of the Astoria Company's investment in the gas business, multiplied by seven per cent.

Q. Is there any depreciation reserve deducted from that total investment?

A. No, sir.

Q. Have you yourself gone over the Treasurer's book?

A. This book?

Q. Yes.

A. No, sir. 5024

The Master: That is cash book, you mean?

Mr. O'Brien: Yes, it is a treasurer's book.

The Master: Well, it is called treasurer's cash book?

Mr. O'Brien: Yes.

The Witness: I have not examined it.

Q. You have not vised it from time to time and O. K.'d it and checked it up?

A. At the monthly meeting of the Committee of Accounts, counsellor, it is my duty to submit this book, which I get from the treasurer's office and submit to the Committee, who check this book against the original approved vouchers. That is my 5025 only connection with the Company's cash book. It is a treasurer's record, rather than a secretary's.

Q. Well, there are large amounts entered every month, from month to month in connection with these various companies?

A. Payments to them.

Q. Yes, and other reports.

A. Yes.

5026 Q. And are reports kept in the Consolidated office of the manufacturing results of the Manhattan companies?

A. No, sir, not that I have any knowledge of.

Q. Do you keep a record in the complainant's office, the Consolidated office, of the manufacturing results of the Astoria Company?

A. Not in the Consolidated. They are available in the Astoria accounting department on the same floor.

Q. And does your work as chief accountant also embrace the books of the Astoria Company?

5027 A. Yes, sir.

Q. And also of the affiliated companies?

A. No, sir.

Q. They do not—they don't come under your jurisdiction?

A. Not at all.

Q. But the Astoria company does?

A. Yes, sir.

Q. And you are acquainted with their system of keeping their books?

A. I am.

Q. And they have a chief book-keeper, I assume?

A. Yes.

5028 Q. Or are you the chief book-keeper of that company?

A. Well, they have a chief clerk of their accounting department, who reports to me.

Q. And he has several accountants under him, I assume?

A. A number of book-keepers and clerks, the same as the Consolidated accounting department has.

Q. But they don't need the extensive corps you 5029
have in the Consolidated Company?

A. Not as many employees.

Q. They haven't any commercial department?

A. No, sir.

Q. And are the manufacturing books of the Astoria Company kept in the complainant's office?

A. No, sir.

Q. Are they kept in the Astoria office or at the Astoria works?

A. The Astoria office.

Q. I am speaking about the manufacturing books, so-called. 5030

A. The engineering records of manufacture.

Q. Yes.

A. To which you referred yesterday.

Q. Yes.

A. The entire Astoria system is similar to the Consolidated. The same routine that I have described as to the engineering records are all on the same basis.

The Master: They are all in the works then?

The Witness: Yes, at the Astoria works, except the accounting records, which are in the accounting department. 5031

Q. In your chart where you show us the make and the accounted for and the unaccounted for, the 3 per cent. condensation and slow meters, and the leakage and the total debit and credit, do you include under the Consolidated Gas Company's total make, the amount they purchase?

A. From Astoria?

Q. Yes.

5032 A. Yes, sir.

Q. That is included in the first column?

A. Yes, sir.

Q. As their make?

A. Yes.

Q. And that amount is just billed from month to month?

A. Billed from month to month, every month?

Q. To the complainant company?

A. Now which company are you speaking of?

Q. The Astoria.

The Master: The Astoria.

5033 The Witness: The Astoria bills every month, as I have said.

The Master: He has been all over that.

Q. Now, are the relations as to gas bought and gas sold to the other affiliated companies kept in the same way and covered and recorded in the same way as you have indicated in respect to the three Manhattan companies?

The Master: Read the question.

(Question read by the stenographer.)

The Master: You draw a distinction between companies other than these three Manhattan companies?

5034 Mr. O'Brien: Yes. Perhaps we better go back.

The Master: What Mr. O'Brien wants to know I think is, take the Westchester Lighting, do you buy and sell from them?

The Witness: We do not.

The Master: Kings County Lighting, do you buy and sell from them?

The Witness: No.

The Master: Is there any other company 5035
other than the Manhattan companies——

Mr. O'Brien: Central Union.

The Witness: I believe that the New Amsterdam manufactures some gas for the Central Union Company and bills them for it. I do not know that of my own knowledge.

Q. Well, I am speaking now as to——

The Master: As to the Consolidated Company, they buy or sell from only four companies?

The Witness: That is right, three Manhattan companies and Astoria.

5036

The Master: Meaning the Astoria Company, the Standard, the Mutual and the New Amsterdam?

The Witness: Yes.

The Master: Those are the only companies with which your accounts have anything to do with reference to buying and selling?

The Witness: Correct.

Q. Well then, what are the relations with the Central Union and the Northern Union?

The Master: I won't allow that question. Exception to Mr. O'Brien.

Mr. O'Brien: Well, your Honor, the West- 5037
chester Lighting.

The Master: Same ruling.

Q. Do any of the affiliated companies sell gas to the Central Union and the Northern Union?

The Master: The question is not allowed. Exception to Mr. O'Brien.

Mr. O'Brien: Well, your Honor can see that if he says in these accounts that are kept by

5038 them the debits and credits between the complainant company and the Astoria and the New Amsterdam and the Standard and the Mutual embrace as one of the elements the make and the unaccounted for, it is necessary for us to find out how far, or verify the accounts of these affiliated companies, whether they sell gas to them.

The Master: No more than any other consumption record. He says all the gas sold by these various companies is accounted for, and I assume that that includes ordinary consumers and consumers in bulk. It don't make
5039 any difference. I won't allow the question. It is fully covered.

Q. Well, did you assert, Mr. Brundage, that there was no gas sent to Yonkers from the Fordham station?

Mr. Ransom: I object to the question as incompetent, irrelevant and immaterial.

The Master: I will let him answer the question. I think he answered he did not know of any.

The Witness: My answer was that I have no knowledge of it, and it is not billed by the
5040 Consolidated Gas Company to Yonkers.

Q. Well now, in regard to records and the verifications of these records covering intercorporate relations as indicated by you, does the accounting department use any records made in the governor houses of the stations?

A. Of the other companies?

Q. Of either the other companies or the complainant.

A. The records the accounting department has of 5041
these transfers of gas are bills from the other companies, which are a matter of permanent record and information in the accounting department.

Q. What I am trying to bring out is, Mr. Brundage, you have records kept in the governor houses of the various companies?

A. Yes, statistical records.

Q. The statistical records, that indicate whenever they start to pump, and when they stop pumping?

A. Yes.

Q. And they know the capacity of the mains 5042
through which the pumping is done?

A. Yes.

Q. Now, is there a record kept of that?

A. Not in the accounting department, sir.

Q. Well, in the station houses?

A. I believe that there is.

Q. In other words is there any check maintained by the complainant company to verify the figures or computations made as you have indicated already this morning, where you analyzed—where you made your chart here and set forth the manner in which the debits and credits between the complainant company and these affiiliated companies are deter- 5043
mined?

A. I don't know, counselor, what I can say more than to refer to the fact that the gas make of each of the companies is a matter of recorded fact from the engineer of manufacture.

The Master: In those various companies?

The Witness: Yes, sir.

The Master: And what——

5044 The Witness: And the sales are likewise a recorded fact through the commercial department.

The Master: What Mr. O'Brien wants to know is what check the Consolidated has in the records of other companies?

The Witness: Why, the man who confirms the accuracy of those computations takes the record of the three Manhattan Companies as the basis for his computations.

The Master: In other words you don't have any one watching the records to see they are correctly kept by these other companies?

5045 The Witness: No.

Q. You don't have any records indicating when the pumping begins from one station to another?

A. Not in the accounting department.

Q. From one main into another main?

A. Not in the accounting department.

Q. Well, do you know any department that has it?

A. I do not.

The Master: I think we have had enough, Mr. O'Brien.

By Mr. O'Brien:

5046 Q. Does the record of operating expenses of these affiliated companies come under your jurisdiction?

A. Not in any way, except as respects the Astoria company.

Q. You are billed on the basis of operating expenses, are you not?

A. In these other three companies?

Q. Yes.

A. We are billed on station cost plus ten per cent.

Q. Do you just take the aggregate figure of the 5047
tation cost of these companies and add ten per
ent. to it and pay it?

A. I believe that the computation as to the sta-
ion cost is determined before these bills are ap-
roved, by looking at their cost records.

Q. Who does that, your department?

A. No, sir.

Q. What branch of the complainant company's
ffice staff does it, if any?

A. Those bills come to me from Mr. Carter's
ffice. I believe they are checked by one of his men.

Q. They flow through his office?

A. Yes, sir. 5048

Q. And as to the manner in which the checking
s done you know nothing?

A. I am not sufficiently informed to testify as to
hat.

Q. That is a branch of accounting that is outside
f your domain?

A. When the bill comes to me properly checked
nd approved, why that is sufficient for my informa-
ion to put it through the accounting department
ecord.

By Mr. Chambers:

Q. Now, in regard to—— 5049

Mr. Ransom: What is the document you are showing him?

Mr. Chambers: Report of the Public Service Commission, to refresh his recollection only. I am not going to show it to him, except that I may use it in asking the question. I will not show it to him.

Q. Now, in 1918, do you recall that you paid to

5050 the Standard Gas Light Company 44.63 cents per thousand cubic feet, and that they paid the Consolidated Company only 42.54 cents per thousand cubic feet?

A. I do not recall those figures, counselor.

Q. Those figures would be obtained from the Standard books, as you have stated?

A. It will depend upon which way the gas for the year flowed. If the gas flowed from us to them it would be billed at our station cost, but if it flowed from them to us, it would be billed at their station cost plus ten per cent.

5051 Q. For the purpose only of refreshing your recollection——

Mr. Ransom: What do you show to him?

Mr. Chambers: I show him this piece of paper, I don't have to tell what it is. He can look at the moon if that will refresh his recollection.

The Master: Ask your question.

Q. For the purpose of refreshing your recollection, look at this piece of paper and tell me if it is not a fact that you paid the Standard more for gas in 1918 than they paid you for gas, per thousand cubic feet?

5052 The Master: In answering you can look at the whole paper, and you can say what the paper is.

By Mr. Ransom:

Q. Does this report of the Public Service Commission refresh your recollection?

Mr. Chambers: I object to that.

The Master: He can look at the whole paper.

By Mr. Chambers: 5053

Q. Look at the whole paper or any other paper.

The Master: You can't show a man just a line on a paper.

Mr. O'Brien: Well, it is conceded that his memory needs refreshing.

The Master: We are not testing memory.

Mr. O'Brien: Oh, yes, that is our purpose, one of the things.

The Master: No. That is the reason I am not going to allow you to ask any more questions.

Q. Can you say now, after refreshing your recollection? 5054

A. What is your question?

Q. If the Consolidated did not pay more to the Standard per thousand cubic feet than the Standard paid to the Consolidated Gas Company per thousand cubic feet.

The Master: In 1918.

Q. (Continued.) In money.

A. The record shows——

Q. No, I don't care about the record, I mean your recollection of it.

A. I will state it the way you want it. We bill them at 42.54, and they billed us at 44.63. 5055

Q. Per thousand cubic feet?

A. Yes, sir.

The Master: Now, Judge Ransom, you have offered these books in evidence?

Mr. Ransom: Yes.

The Master: For what purpose?

Mr. O'Brien: Will your Honor permit me one question in this case before you conclude?

The Master: What is the question?

5056 By Mr. O'Brien:

Q. Mr. Brundage, you have stated that the record of cost and expenditures of the Astoria company are under your jurisdiction.

A. I have so testified, yes, sir.

Q. Are their books of account kept in accordance with the rules of the Public Service Commission?

A. Yes, sir.

Q. You positively assert that?

A. Yes.

Q. They vary in no particular?

A. There may be some minor variations that I have not in mind, the same as there are minor vari-
5057 ations in the case of the Consolidated, but substantially it is in conformity with the Commission's accounting system.

Q. Will you say that the record of depreciation and contingencies conforms to the rule of the Commission.

Mr. Ransom: I object to that question at this time.

The Master: I will allow it.

Mr. Ransom: Exception. I have not asked the witness a question about the Astoria books, and he is purely Mr. O'Brien's witness on these
5058 matters.

The Master: What is the answer?

A. The company does not set up any reserve for so-called depreciation; it does have a reserve for contingencies.

The Master: That is all I am going to permit you to ask, Mr. O'Brien.

Judge Ransom, will you state the purpose of your offer?

Mr. Ransom: I think that has already been 5059
stated. These books are offered generally for proving the operations of the Consolidated Gas Company.

The Master: For the year 1918?

Mr. Ransom: For the year 1918.

The Master: Do you expect to prove by these books the amount of coal purchased in 1918?

Mr. Ransom: I think they are competent upon that issue.

Mr. Chambers: He will claim that, I suppose, for everything. That is just it.

The Master: I am asking that to bring out a 5060
point. Do you want me to assume that all of the items charged in these books during the year 1918 represent coal purchased in 1918?

Mr. Ransom: Well, leaving out this possible question that there are certain overlappings in January of each year from the preceding year, which, of course, takes place from year to year in the regular course of business inevitably, aside from that my answer is "yes".

The Master: We will get at it in another way. Mr. Chambers, do I understand you to object to the admission of these books in evidence? 5061

Mr. Chambers: I do, and I am ready to amplify my ground.

The Master: State your objection.

Mr. Chambers: I object to them as incompetent, irrelevant and immaterial; not properly proven; no foundation laid for their introduction, and that there is no rule of law that I know of or have been able to find, with all due

5062 respect to counsel on the other side, which permits their introduction in the form in which they have been offered.

Now, let us take just one at a time. He has offered twelve of them, I think, or eleven of them.

The Master: I think there are probably twelve or thirteen.

Mr. Chambers: Let us take the first one, Exhibit 189 for identification, which is the operating ledger.

Now, this is a very important and serious question, and your Honor has already stated
5063 that you appreciate it. Counsel for the other side has presented a memorandum, which he states substantiates his offer. Now, I am satisfied to rest my objections on the authorities which he cites.

The Master: Will you let me interrupt you, Mr. Chambers. Don't argue your point now. I am going to try to shorten the discussion by giving the operation of my mind and my thought at this time. What I wanted for the time being, is, if you will just put your objections on the record. You say they are incom-
5064 petent as proof of any facts?

Mr. Chambers: Yes, and not original books of entry.

The Master: And not properly proved?

Mr. Chambers: We find that in order to lay the foundation for the introduction of say this one book, the operating ledger, we would have to have the books of the Standard and the

Mutual and the Astoria plant and each of these 5065
stations.

The Master: What I want to get at now are the points of objection. You claim they are not competent; that they are not properly proved; that they cannot be taken as of any probative force as to any facts contained in them, and that they are not original books of entry.

Mr. Chambers: I have stated that, substantially.

The Master: Is there any other point you think of that ought to be placed in the record? 5066
Does any other point occur to you, Mr. O'Brien, that is, as a point, not as argument?

Mr. O'Brien: I have so many subdivisions to my point——

The Master: I think it is argument that you have in mind.

Mr. O'Brien: There are things such as this subdivision of the same general point. It has been indicated by the testimony that most of the men who made the original records for 1918 are still living and in the employ of the company and available as witnesses.

The Master: That is only argument. 5067

Mr. Chambers: It deprives the defendants of the right of cross-examination.

The Master: Are there any other points?

Mr. Hayward: I would only add to the objection that Mr. Chambers has made, and which I would like to be recorded as making also——

The Master: I have assumed that all counsel

joined in the objections stated by Mr. Chambers. If there are any other points that occur to either of the other gentlemen, I thought it could be put as part of the same general objection.

Mr. O'Brien: I want to say as one of the many things that may be said on these objections, that the rule referred to as an authority on which you may act, Rule 62, does not give you such authority as is indicated by counsel for the Complainants.

The Master: That is argument.

Mr. Chambers: Let us add to our objections that they are heresay and not the best evidence, but secondary evidence.

Mr. Hayward: I would add to that, if the Master please, and I would like to have it in the record, that in my opinion they are not either books of original entry as ordinarily accepted under the rules of evidence, nor yet are they tabulations made in such manner and such form, by reference to contemporaneous records under the direct supervision of some clerk, as to allow them to be admissible as tabulations. There is a broken link in the chain, they are neither one thing nor the other.

Mr. O'Brien: I make the further objection—I regret that we have not been able to take this up in a continuous statement—it is broken——

The Master: It will be continuous before we get through.

Mr. O'Brien: I would like to add this point to the objections already made, that, apart from the fact that in many instances the rec-

ords and the books are the tenth or eleventh 5071
entry of the fact recorded. They have not laid the foundation for the introduction of the books by proving the facts that are recorded.

The Master: That is argument. I will not hear any more.

Mr. O'Brien: In other words, that if they are books of original entry——

The Master: You say that if they are books of original entry, they have not laid the proper foundation?

Mr. O'Brien: Yes.

Mr. Hayward: I would ask the Master if 5072
under the objections already made, he thinks that if it should be concluded that they are secondary evidence, that the proper foundation has not been laid for secondary evidence.

The Master: Yes. Now, really, I am very much puzzled about it. I am inclined to think that it is the tendency of the courts to modify the old rule and to consider books as books of original entry that in days gone by were not so considered. If these books were ordinary books of account of a merchandising business, based upon sales slips, order slips, delivery slips and receipts, showing the receipt of mer- 5073
chandise and material, and in manufacture, and the amount paid for the material, and the amount paid for labor, having been kept in the ordinary course of business as the general books of account, I should not hesitate to say that I think the rule had been extended to the point of permitting them in evidence as books of original entry. I do not think they are,

5074 strictly speaking, books of original entry in the sense that we have always understood, but the impression I get from reading the cases is, that the courts have gone pretty far in extending that rule, and in holding that the general books of account kept in the accounting office of a business enterprise, the data for which comes from a number of different sources, are within the accepted recognition of the term "original books of entry". The trouble in this case is that these books contain a lot of items that are not based upon that kind of a record, the allocation of expense, the setting up of
5075 charges against other companies, so far as I can tell, perhaps arbitrary statements, that part of an item of cost should be applied in one way or another, all of these things bother me in the handling of these books. That is the way my mind runs. Now, I assume that counsel for the complainant, taking these books, intends to call an expert to prove the tabulations. In order to do that he has got to assume that some of these items are correct. I hardly think I can go so far.

Mr. Hayward: Tabulations from these
5076 books, and not from the antecedent books or antecedent contemporaneous documents.

The Master: I am afraid I cannot go so far.

Mr. O'Brien: He has built a house of cards.

The Master: I am wondering whether these books cannot remain as exhibits for identification, and whether this question cannot be more properly disposed of when we get somebody who attempts to testify to tabulations and

computations. It may well be that the man 5077
who is called, Mr. Teele, for instance, if he is called, may say, "I used these books and all the supporting vouchers." If so, his tabulation might be correct, and these books might then be offered and received in evidence only in so far as items covered by that tabulation appear upon these books, just as they might call in and offer in evidence all their pay roll sheets, cards and reports.

Mr. Hayward: In that case these books would have no more place here in court than the other documents, the antecedent docu- 5078
ments, the contemporaneous entries.

Mr. O'Brien: Your Honor, then in that case they will have to offer in evidence the supporting documents. I want to use these books in connection with my argument.

The Master: Wait a minute, Mr. O'Brien. We are going to give Judge Ransom the floor first to present his views why they should be offered in evidence, then I am going to hear Mr. Chambers, then I will hear you, and then I will hear Col. Hayward. Do not go over the cases on your brief, Judge Ransom; there is 5079
no use reading all that to me, I have read it.

Mr. Ransom: I may want to refer to one or two of them.

The Master: I want you to point out to me the probative force of all of the items or part of them. There may be some of them that there is probative force to, on the theory that I have indicated, that purchases actually made of merchandise and bills actually paid—I am

5080 inclined to consider these as books of origin
entry on those matters.

Mr. Ransom: If the Court please, the
books, as I have stated, have been offered upo
the question of receipts and expenditures, th
income and outgo.

The Master: Will you let me interrupt y
as you talk, Judge Ransom?

Mr. Ransom: Yes.

The Master: When you say receipts, y
mean receipts from all sources?

Mr. Ransom: These books contain with
their covers receipts from all sources. The
5081 books show the entries which were made
the regular course of business, covering t
expenditures of the company.

The Master: Of all kinds?

Mr. Ransom: Of all kinds. There are,
take it, essentially two questions. One is t
question of the admissibility of the boo
another is the question of the conclusivene
and probative force of the books upon certa
types of questions which your Honor has
ferred to as involving what Mr. O'Brien h
called allocation based on discretion. The
5082 is also another point of view from which the
are two questions here: One is the questi
whether the money has been laid out by t
company, whether a given item has been spe
by the company in its business. There m
come a further question, whether if the mon
has been spent it is an expenditure proper
chargeable to the gas business of this co
pany.

The complainant here believes, and believes 5083
clearly, that under the authorities and under the logic and under the necessities of this case these books are admissible in evidence, admissible in evidence as they stand, admissible in evidence to show the facts which are therein set forth with respect to the income and outgo of this company. It is true that there is not produced here at this time certain statistical records, certain vouchers which are referred to in these books which stand back of these entries in the books, but as a practical matter and under the authorities, that pro- 5084
duction, a sweeping production, the proof of this case by what we might call the ancient common-law proof; is not called for by the law of this subject as it is recognized now by the Supreme Court of the United States and by the Federal courts which have passed on these rate cases.

Now, just a moment on the question of this allocation. Mr. O'Brien has referred to what he regards as arbitrary allocation. But there is nothing arbitrary about these allocations. Take for example the matter of retirements which he referred to yesterday as involving 5085
an arbitrary division of expenditures, some exercise of discretion on the part of some unidentified person. The persons who have exercised the discretion are the Public Service Commission. The employees of this company have no alternative but to follow the basis which has been laid down by the Public Serv-

5086 ice Commission for the making of these retirements.

The Master: No, I am talking about this kind of a charge: A payroll, we will say, of a department. There is evidence in the case that part of the men are used for the work of other companies. Am I to assume that the item charged in here is correct?

Mr. Ransom: Here is the situation on that. There are these vouchers, there are these statistical records which have been referred to. The one thing which Mr. O'Brien has done a
5087 great service in has been bringing out in this case that there is no way in which money can come out of the treasury of the Consolidated Gas Company without the written signature, the written audit, the written approval of the persons who know most about it, that every expenditure is passed on in that way by the superintendent who has personal charge, and that it goes through in the regular course of business—that voucher so attested by the person who has the direct and personal charge—a routine of audit, of check and approval until the money finally goes out of the company.

5088 The Master: How much of Alrich's expenses are in the book charged to the Consolidated?

Mr. Ransom: I don't know.

The Master: Then how do I know?

Mr. Ransom: What I was going to get at is this: Back of these books let us say are vouchers; those vouchers show the allocations, the divisions of time. These vouchers have been and are continuously open to the examina-

tion of the defendant public authorities in this 5089
case. They have been open since last February. The statistical summary, the tabulations which we shall offer in evidence, are made up in part from these books, made up in part with the confirmation of the underlying data, and those things have been in the hands of the defendants now for many months, and under the authorities to which I have directed your Honor's attention it does not lie in the mouths of these defendants to say that for seven months they have failed to avail themselves of that access to vouchers, that for two or three months they 5090
have failed to exercise the opportunity of examination and check on these underlying vouchers which show the allocations and the divisions in this case.

Look at the position in which this company finds itself. Here is a commission which in behalf of the State of New York establishes what is called a uniform system of accounts. Here is a commission, a state which through its taxing authorities exercises a continuous supervision; here is a corporation counsel who participates in practically all proceedings before the commission. Here is a system under 5091
which certain things have to be done in definite ways, given items have to be put under given headings. Failure to do that subjects not only the company but the individual employees to severe penalties.

The we bring here the books, the books which are the first and original and only books which combine all of these statistical records under

5092 the headings of the uniform system of accou
and the objection is made that they are
books of original entry and that they are
admissible in evidence in behalf of this c
pany, this company which has had to sub
itself to the burden of complying with th
regulatory requirements, this company wh
has not only had its books under the contin
examination and supervision of the commis
through its history, but which reports the c
tents of these books in its annual report to
commission and the commission checks up
5093 annual report on the basis of these books,
then the commission makes its report on
basis of these books. So that the action
practically every person who has anything
do with this company, the public, the legi
tor, the investors, the taxing authorities,
municipal authorities—everybody acts on
basis of these books and of these statist
records which stand back of these books.

In other words, here in this court these
fendants have assumed an attitude whic
believe is absolutely unprecedented in the
tory of cases of this character. Why, in
5094 previous case where Mr. Burr personally
ticipated, the present corporation counsel,
he take any such attitude as the defendants
taking now in this case? Why, no, they to
firm of accountants—Mr. Burr did—a
well known firm of accountants, and they
them to work on the books and put them
work on the vouchers which stood back of
books, and the computations made by these

countants, the tabulations, were put in evi- 5095
dence, in behalf of the city and in behalf of the company, tabulations from the books, and the books themselves were put in evidence.

On this matter of allocation, I call your Honor's attention to the Arkansas case where the whole question in the case was allocation, and yet without calling to the stand all of the men who had made all these allocations, all these distributions of expenses, between interstate and intrastate, they were put in evidence.

Upon this situation here we are very clear that these books are admissible in evidence in 5096
behalf of the company to show the income and the outgo, as therein set forth, and I am frank to say that I know of no case involving a large company, involving a series of plants, a series of branches, or a railroad, where there are operations over wide areas and involving a large number of employees, where the course which is proposed here in behalf of the complainant has not been sustained, allowed by the master and sustained by the courts following him.

The Master: Let me ask you this: You 5097
allege in your complaint that you have a certain amount of invested capital in this business?

Mr. Ransom: Yes.

The Master: And it costs you a certain amount to manufacture gas?

Mr. Ransom: Yes.

The Master: To prove that you first set out to prove the amount of your invested capital.

5098 I take it that that means the cost or value or both, with additions, if your manufacturing plant, the land, buildings, machinery and the like; is that right?

Mr. Ransom: Well, I do not know that I would quite state it that way. Of course, in every rate case there comes up two questions: One is the question of the adequacy of the earnings to pay operating expenses, and then there is the further question, if the earnings are adequate to pay operating expenses, whether they are also adequate to pay a return, a fair and reasonable return on the value of the 5099 company's property used in the public service.

The Master: You are basing this action upon both theories, aren't you?

Mr. Ransom: We have alleged both elements. We have alleged that this rate as it stands does not pay the operating expenses of the business, much less allow a fair return on the company's property, which is the constitutional guaranty of this company the same as of other companies.

The Master: This is what I would like to get clear. Leaving aside for a minute the 5100 question of invested capital, but taking up your element of cost of manufacture, excluding the overhead—that is the land and taxes and the rest of it—you want to prove how much it costs you to make your case, don't you?

Mr. Ransom: Yes, sir.

The Master: Not how much you pay other companies for gas, but how much it costs you for gas; is that it?

Mr. Ransom: Yes, we have to prove that. 5101
Yes, sir.

The Master: In order to do that you have to prove that there are certain things that go into the manufacture of gas?

Mr. Ransom: Yes.

The Master: Coal, oil and labor?

Mr. Ransom: These are the three principal things.

The Master: And in order to prove your case you want to prove how much coal was used during the year 1918, don't you?

Mr. Ransom: Yes. 5102

The Master: You want to prove how much oil was bought in the year 1918, don't you?

Mr. Ransom: Yes.

The Master: And you want to prove how much labor was spent on that in 1918?

Mr. Ransom: Yes.

The Master: Do you also want to prove how much it costs you to maintain the mains in the streets?

Mr. Ransom: We will prove our operating expenses with respect to mains in the streets of course.

The Master: As I understand it these books 5103
which you offer in evidence contain the items of coal and oil purchased during 1918; is that correct?

Mr. Ransom: Yes.

The Master: Do they include them all? I do not think so, because the probability is that some of the November and December deliveries were not charged in the 1918 books.

5104 Mr. Ransom: Of course, what I said before in that respect applies. There is an overlapping, of course. For example, we of course are not resting our case here solely upon 1918; we expect to prove conditions in 1918 and we expect to offer proof prior to 1918.

Mr. O'Brien: Well, the books were offered for 1918.

The Master: These books are applicable to 1918. As I said before, if these books were limited to the items which I understand you undertake to prove I would be inclined to let them in, if I can overcome what to my mind

5105 seems to be a difficulty, namely, the fact that apparently some of this expense appearing on these books may have been expended for the use of other companies. There is not any proof before me that, for instance, Mr. Alrich's salary has been apportioned at all or how it was apportioned, and I do not like to take these books as showing the amount expended for labor, for instance, without some proof that the labor charges here were exclusive of any work done for other companies. That is what bothers me, to illustrate my point.

5106 Mr. Ransom: Of course there are certain matters of what has been roughly and somewhat inaccurately referred to as allocations or distribution expense, upon which we ask to have the book received subject to connection.

The Master: There is no proof before me that the item of labor has or has not been allocated in these books.

Mr. Ransom: I had expected, as your Honor

will recall, to ask the witness Brundage cer- 5107
tain questions with respect to these allocations before the question which has now been precipitated for oral argument was brought on.

The Master: It is a fact that you said you had a number of questions to ask, and it evidently escaped us.

Mr. Ransom: Yes.

The Master: Do you want to ask him any further questions?

Mr. Ransom: If you feel it is necessary.

The Master: I am giving you what bothers me now. I want you to understand, Judge 5108
Ransom, as well as all counsel in the case, that this case is not going to be tried or half tried upon the disposal of any technical situations. If I were to rule these books out of evidence now because they were lacking in certain proof, I am going to let you have the proof, I am going to have this record complete. I am going to permit the Consolidated Gas Company the best way it can and under the rules of law to prove its case, and of course I am going to permit the other side to show by any way it can within reasonable limits that you are not entitled to an increase in rates or that this 5109
law is not confiscatory. This case is not going to turn on any ruling made in one instance, where it is upset and overturned in another case where additional proof comes in. I want to get the record right. In other words, when I pass upon this case and pass upon the facts submitted to me and send it up for review, I want the Court to have before it a record that

5110 won't be subject to the criticism that the United States Court made to the Master's Report in the previous case. I do not want any doubt about anything. I want it proved and I won't record a fact that is not as clear as a bell on this record.

Mr. Ransom: We surely do not want that.

Mr. O'Brien: Even if this was a doubtful question, your Honor, being safe in regard to to this matter, the defendants want a record, they want the facts, they want the truth. They do not want an interminable trial.

5111 The Master: That is what we are all here for, and the only duty I feel I have is to keep the record as straight, as clear as we can make it and to expedite the trial to the point of not excluding anything that is necessary to a decision.

Mr. O'Brien: As one connected with the case, we have more than a partisan interest in this matter. As your Honor well stated, after this record is through, to have it recorded that at the very threshold of the case they dumped these books of account out of the clearing house and dumped them in here in evidence——

5112 The Master: We are all here to find out what the truth is.

Mr. O'Brien: That is what we want.

The Master: If the company, charging what they must now charge, not in excess of 80 cents, are to have relief, that is all there is about it. But they have got to prove it.

Mr. Chambers: If not, the half million people should not pay a cent more than necessary.

The Master: If the fact develops from the 5113
proof here is—and it ought to be developed to a point where counsel on all sides ought to agree upon it—and that fact ultimately arrived at is that the company charges for gas less than what would be a living wage to them, they are entitled to more.

Mr. Ransom: The difficulty is this, your Honor: The effort on the part of Mr. O'Brien is, as stated on the record, to force a method of proof which is wholly impossible within the limits——

Mr. Chambers: No, if they have an honest 5114
case, certainly they ought to be able to prove it within the rules.

Mr. O'Brien: I will show how reasonable proof may be taken that will give us the truth, that won't be consuming time for the sake of consuming it.

The Master: If Mr. Ransom wants to call Mr. Brundage he may do so.

Mr. Ransom: I do.

The Master: We will get that out of the way first.

Mr. Hayward: I supposed the witness was 5115
through when the offer was made the other day about the book. I have no objection to these questions, but we got rather away, if your Honor will recall, from the importance or from any importance in fact of the question of this uniform system of accounts. Now, in view of Judge Ransom's argument, by which he seems to rely on that uniform system of accounts to bolster up this form of evidence, he

5116 has given it a greater importance in his argument certainly than the Master gave it or than any of us thought he would give it—if you recall I asked the witness if they had not filed the reports as required by law within the time. He says it was a fact. I asked him if he would refresh his recollection by looking it up and the Master declined to let him do it, and Judge Ransom said that at the next hearing he would give me the dates when the reports were filed, which he has not done.

Mr. Ransom: That was during the time the
5117 witness was on the stand.

Mr. Hayward: I have not got them yet, have I, Judge?

Mr. Ransom: No.

Mr. Hayward: One more point on that. As long as Judge Ransom lays so much stress on that, I want to show by this witness and have an opportunity to do so, that there were many other ways than the ones he testified to in which the company has not complied with the requirements of the uniform system of accounts. The Master will remember he said with these exceptions we have complied with it.
5118 If he has come to rely on that, as he says he is in his argument, I want to show that there are many other ways in which they have not complied with it. My personal opinion is that point does not help him at all. But if it is going to be considered in the Master's mind, let us have the truth about the uniform system of accounts and how near the company

came to complying with them. That would be fair, wouldn't it? 5119

The Master: Yes, and I would like you to bring out a thing of that kind, because I am very much impressed by the argument that the books have been kept in accordance with the requirements or the rules of a commission that has power to make those requirements. In other words, my opinion is when a statute requires a thing to be done and the thing has been done in accordance with the statute, I shall assume it was accurately and properly done.

Mr. O'Brien: But, your Honor, that presumption won't lie in a rate case. That presumption won't lie here because you have a different rule of law or evidence. 5120

The Master: I do not understand that the rules of evidence are any different, as I said before, in a rate case from any other. The method of arriving at the truth and the basis of arriving at the ultimate fact may be somewhat different, the burdens may be somewhat different; but the method of arriving at the truth is the same in any kind of a case.

To illustrate what is in my mind, some years ago I was appointed Deputy-Attorney General to prosecute some election frauds down here, the charge being that the man did not live at the address given. As Deputy-Attorney General I proved that at the address given there was an hotel and nothing else, that it was the duty of the hotel keeper complying with the statute in that regard to file 5121

5122 with the Superintendent of Elections thirty days before election a report stating the names of the persons then living in that place. I took the position before Judge Crain and some of the other judges in General Sessions that that report, made in conformity with the statute and as required by statute, was a proper piece of evidence and had probative force to the extent of putting the burden on the defendant to show that the hotel keeper had made a mistake.

We argued it out very fully before Judge
5123 Crain, and I remember at that time submitting authority to him in support of my contention that that report, made in conformity with the statute and as required by law, must be received in evidence for the facts it contained, which included the fact that this particular defendant was a resident.

The defendant in every instance undertook to overcome that proof by showing that as a matter of fact he had in his own mind declared that particular hotel to be his home and residence, and although he had not been there within 30 days or 60 days, and had been
5124 tramping around the country somewhere, when he got back to his home this was his home, and in several instances the jury believed the defendant's explanation, and in spite of the report of the hotel keeper that he did not live there, which had to be taken in the light of the defendant's testimony that it was his home, with the usual intention to return to that as his home, in a number of

instances the jury acquitted and in one or 5125
more cases the jury convicted because of the testimony not bringing out the facts clearly under cross-examination.

When a statute requires a certain thing to be done, and that thing is done, I think it has some probative force. That is my view of it. Of course if this company has not complied with the law and has not kept these books in accordance with the statute, all I have said falls by the board, because they are not to receive the benefit of everything that is presumed from the compliance with the statute. 5126

Mr. Chambers: We do not prescribe to that, because that rule does not apply in a rate case. I am here representing at least half a million consumers.

The Master: Yes.

Mr. Chambers: And they are entitled to have the case proved as to them in the ordinary way. If your Honor would let in books kept in conformity with the Public Service Commission's ruling that would not be binding on behalf of a million people.

The Master: But, Mr. Chambers, these public service laws were enacted for the very pro- 5127
tection of the people you represent.

Mr. Chambers: Not for the purpose of rate making.

The Master: For their protection in all these facts.

Mr. Chambers: The legislature took away from the public service commission by this law the authority to make rates.

5128 The Master: No.

Mr. Chambers: Those reports are sent to the public service commission for a purpose entirely foreign to rate making.

The Master: I do not care what the purpose was; it was for the protection of the public. That is the purpose of the public service commission.

Mr. Chambers: Now they are offering it for the purpose of establishing a new rate and breaking down an old rate.

The Master: No, they are offering it for the
5129 purpose of showing what it costs them to make gas.

Mr. Chambers: I say that they are not admissible for any purpose.

Mr. O'Brien: Your Honor, you cannot substitute a presumption for a fact that is provable by available witnesses and available data.

Mr. Chambers: The Public Service Commission branch of this is not binding at all, so I have found out, in a rate-making case, because the legislature fixed the rate and the Public Service Commission had not power to review anything.

5130 Mr. O'Brien: Not only that, but up above all these presumptions or inferences or conclusions that might be drawn in an ordinary case, stands that principle laid down in every one of these rate cases by the United States Supreme Court: The statute is presumed to be constitutional and every presumption and every doubt and every ambiguity would have to be resolved in favor of the law.

The Master: Yes. 5131

Mr. O'Brien: I want to say that there is a different rule in these cases, and I want to say that every one of these rules that you have referred to, we went over with a careful discussion of the case recently in the Supreme Court, tried before one of the most careful, thoughtful, studious and learned judges we have in the Supreme Court of New York State, that very thing came up not only in the form that has been mentioned here by the general books, but it came up from another angle by the representative of the Public Service Commission attempting to put in evidence certain reports that were made by various gas companies to them, and where that same principle was referred to, that—— 5132

Mr. Ransom: May I finish my argument?

Mr. O'Brien (continuing):—where the law said to do so, it was presumed to be done, and we had to overcome that presumption.

The Master: Well, wait until we get through with this witness before you go ahead with the discussion.

Mr. Ransom: I will finish my argument after I finish with the witness. 5133

By Mr. Ransom:

Q. Mr. Brundage, do these books, which have been offered in evidence here and marked for identification, show all of the expenses and revenues of the Consolidated Gas Company during 1918?

A. They do.

The Master: You don't mean that it shows payment for all of the coal bought in 1918, do you?

5134 The Witness: The coal bought in 1918, a
I explained yesterday, your Honor, is charge
to a stock account, and does not go into t
revenues and expenses. The item that go
into the expenses is the coal actually used.

Q. Now, all expenses made for the account
other companies by the Consolidated Company du
ing 1918, are charged upon these books?

A. Yes, sir; charged to the other companie
Judge, if it is not perfectly clear.

Mr. O'Brien: You are not speaking no
from knowledge of every fact. You are spea
5135 ing—you are arriving at a conclusion bas
upon the statement as to the system, are y
not?

The Master: I will let you cross-exami
when Judge Ransom gets through.

Q. With the exception of the additional or di
sional titles which you have indicated, or sub-titl
do the account titles in the operating ledgers f
low the account titles given in the uniform syste
of accounts?

A. They do.

Mr. O'Brien: I make my objection, yo
Honor, incompetent, immaterial and irre
5136 vant.

Mr. Chambers: Same objection.

The Master: I will allow it.

Mr. O'Brien: Your Honor, it is asking t
witness if they have complied with the la
That is a conclusion of law.

The Master: Now, he simply asks wheth
the titles are the same. He does not go so f

as to say whether the items in those accounts 5137
are the ones required.

Mr. O'Brien: Well, there isn't anything about loans to other companies in the uniform system of accounts, Mr. Brundage?

The Master: I won't let him answer, Mr. O'Brien. You will have to hold it for cross-examination.

Q. Mr. Brundage, are these books which have been here offered in evidence the first in which all of the data from the various statistical records is brought together and classified under the headings of the uniform system of accounts? 5138

Mr. O'Brien: I object to it on the general grounds, and further on the ground that it is vague, referring to these statistical records. There is no statistical records in the testimony or in the record.

The Master: I will sustain the objection on the ground that the witness testified, and his testimony completely fixes the method of keeping the books and the data that goes into them.

Mr. Ransom: I am not sure that the record is complete about that point, that these books are the first books in which all of these entries are brought together. 5139

Mr. Chambers: He says just the opposite to that.

The Master: When you say the first book, you are asking the witness' conclusion. I have before me a very complete picture of the method of keeping their records of account. I have before me the methods that the branch offices have and the various works have and the vari-

5140 ous stations have, the reports they make, it is for me to determine whether or not are the first books with the general entr

Q. Mr. Brundage, record has been made o examination of certain witnesses by Mr. O'Bri the fact that some employees of the Consoli Company have done work for other companie for the account of other companies, so that part of their time has been chargeable to companies. Will you explain just the mann which that division is handled, and that cha made?

5141 Mr. Chambers: I object to that, becau doesn't know. Hasn't he made it clear th does not know, and that it is somebody judgment and discretion?

The Master: I will let him answer the tion and see what he knows.

Mr. O'Brien: Well, even if he says it made in a certain way, it does not prove thing.

The Master: No, it does not prove anyt but I want to see what he does say.

The Witness: We will take the item o engineering men, who have duties along

5142 line.

The Master: Take Alrich. Alrich gets ary of how much a year, do you remembe

The Witness: Six thousand dollars.

Q. Take the journal entry where you split salary——

The Master: Take Alrich's testimony he got a salary of $6,000 a year.

The Witness: Yes, sir.

The Master: In what books now, offered in 5143
evidence, does that appear?

The Witness: It does appear charged to an account called Engineering and Superintendence, to which account there is similarly charged other engineers of the construction department who are paid on a monthly salary. This total cost so charged to this account for the year, together with a statement of the amount of construction work performed by it for account of all of the companies, by this construction department, forms the basis upon which we charge annually to each of the companies for whom work is performed, their share 5144
of this item, Engineering and Superintendence. Now, under the construction department——

The Master: What book does that show in?

The Witness: You will find in the operating ledger, section A, an account "Engineering & Superintendence," to which is charged these monthly salaries, and to which is credited annually the amount charged to other companies, leaving in our account of Engineering and Superintendence, the amount applicable to our own work.

The Master: Where are the records showing 5145
the amount of construction work done by the other companies?

The Witness: We get it annually from the other companies.

The Master: Have you that yourselves?

The Witness: It appears in their report.

By Mr. Clark:

Q. Annually?

5146 A. That is rendered annually.

Mr. O'Brien: There we come again in 1
of 1917 expenses.

The Master: The part that bothers me th
is this: I think that if these books were
lowed in evidence there ought to be at the
posal of the defendant the supporting vouch
for every charge.

Mr. Ransom: Every voucher for every cha
in these books has been at the disposal—

Mr. O'Brien: Now, if your Honor please,—

The Master: Just wait a minute. Take
5147 item here, Alrich's salary, $6,000 a year. T
is charged in Engineering and Superintende
Account. You will also find there, taking t
as an isolated item, that during one year
Consolidated Gas Company did $1,000 wo
of construction work, the New Amsterd
$25,000 worth of construction work, and
other companies did $25,000—say that
other companies did $75,000—or we will
sume that they did $100,000, for easy illust
tion, and that the Consolidated did $100,0
Now, so far as the Consolidated is concern
counsel for defendants, upon looking at th
5148 books, can see how much construction w
they did, can they?

Mr. Ransom: Yes.

The Master: Upon looking at the Cons
dated books, however, they cannot see h
much construction work the other compan
did.

Mr. O'Brien: That will likewise apply to
distribution of expense for gas bought and s

Mr. Chambers: That applies to a lot of 5149
things.

Mr. Ransom: That applies, of course, to everything that comes in and goes out. There are certain records which the Consolidated Gas Company has, and there are certain records which these other companies have.

The Master: These defendants ought to have, I think, the supporting voucher for every charge that is made in your books. They ought to be able in your records to check up, assuming now that I agree with you that these books are books of original entry and can be received in 5150
evidence as proof of the facts, having in mind some of the cases which go so far as to say that the books having been kept in due course, and being supported by vouchers, are acceptable, and assuming that I reach the conclusion that these books are the kind of books that the Court will let in, where are the vouchers that can be found in your files to support these entries?

Mr. Ransom: There are two classes of cases in that category. In the first place, there is the question of what records the Consolidated Company has of work done by its engineers and 5151
work in which they participated. That would be supporting data.

The Master: Alrich, for instance, did not keep a record of his time.

Mr. Ransom: The other thing, of course, is the matter of records of the companies for whom work is done. Now, so far as that situation is concerned, these defendants were noti-

5152 fied a considerable time ago, that they could have full access, that we would obtain for them full access to the plants and properties and records of those other companies.

Mr. O'Brien: You have not done that. I want to have that disposed of right here. I put up that question to associate counsel Goetz Saturday. I said to him that we did not want only books that they saw fit to deliver to a room, or the books that were requested by the accountant there; that we wanted leave to go into their offices and find the books and
5153 pick up the records there. There is a great deal of difference and I want to nail that right here.

The Master: You have nailed it.

Mr. O'Brien: When we went to the stations we were refused permission to see their records.

Mr. Ransom: If your Honor please, this thing is not susceptible of controversy or oral argument. This offer was made, fortunately, the same as other offers have been made to these defendants, in writing.

The Master: What power have you got to
5154 make an offer for the New Amsterdam Company?

Mr. Ransom: We offered to take up with the offices of these other companies and procure for them any of these things, the Astoria Company, or any of these so-called Manhattan companies, we offered to take up with them and procure these things. With respect to the company that they spoke about first in that

connection, I went personally to the president 5155
of that company and talked to him and arranged to get a permit for them for access whenever they wanted it.

The Master: Are there any other questions that you want to ask Mr. Brundage?

Mr. Ransom: I don't think Mr. Brundage has fully explained what he started to explain.

The Witness: I want to explain how that matter is handled fully.

Mr. O'Brien: I object.

The Master: I am going to let him state it.

Mr. O'Brien: There is no question on the 5156
record and the witness is volunteering.

The Witness: He asked me a question and I did not finish.

Mr. O'Brien: You are anxious to tell us this?

The Witness: I want you to understand it.

Mr. O'Brien: You are anxious to get it on the record?

The Witness: Yes.

Mr. O'Brien: Then I object.

The Master: I will overrule the objection. I want to hear what he has to say.

The Witness: I explained in my first state- 5157
ment how these men carried on a monthly roll, three or four of them, are apportioned at the end of the year, but the large field force assigned to these works under the engineer of construction keeps an accurate record of the number of days and hours of service that they perform for each company, and that is billed each month.

5158 Mr. Ransom: In view of what has just been said I offer in evidence a copy of a letter sent to counsel for each of the defendants on August 6, 1919, giving access, or offering to obtain access to the books, accounts, vouchers, plants and properties of each of these companies.

Mr. Chambers: August 6th?

Mr. Ransom: August 6, 1919.

Mr. Chambers: That is since the case has been on trial. We would have a fine time attempting to examine these records when we have been busy here in Court every minute.

5159 Mr. Ransom: I make that offer.

The Master: Judge Ransom has offered a paper in evidence. Is there any question about its receipt?

Mr. O'Brien: I object to it. That letter seems to be a copy of a letter received——

The Master: On or about that date?

Mr. O'Brien: I should judge so.

The Master: Mr. Chambers, did you get it?

Mr. Chambers: I don't remember getting it at all. Let me look at it.

Mr. O'Brien: Your Honor, whether it was

5160 received or not——

The Master: That is what I want to get at; I want to get that fact. If you didn't receive it, I certainly will not allow it in.

Mr. O'Brien: We are not going to try this case through correspondence.

Mr. Ransom: They have raised this question——

Mr. O'Brien: He says, "We will endeavor to

get this permission for you if you will send us word at once if you will accept the opportunity"—putting a stop watch on us again. 5161

The Master: Let me find out whether counsel got it, first.

Mr. Chambers: To tell you the truth, I may have received it, and didn't have time to read it even, I have been so busy with this case. Counsel writes such long drawn out letters that I cannot spare the time to read them.

Mr. Ransom: Let me judge of the length of them.

Mr. Hayward: I would like to say that we got that letter at about the time it purports to be dated, and I would like to say what I thought about it when I got it. 5162

The Master: I shall assume, for the purpose of my ruling, that that letter was delivered to various counsel for the defendants on or about August 6th. I shall exclude it from the record upon the ground that it is not so much a question of offer, as it is a question of right and power to look at them. I think I can dispose of the matter, irrespective of any offer to get access to the records of other companies. I think I must determine this question upon the absolute right and power of these defendants to have at their disposal, without the consent of anybody else outside of this company, the supporting records and vouchers. 5163

Mr. Ransom: We offered to bring it about that they should have the same kind of access to the books and vouchers, records and plants

5164 and properties of these other companies that we have given——

The Master: Suppose the directors of the Mutual Company next week, if I receive these books in evidence, should refuse to stand by an agreement made by their officers or themselves.

Mr. Ransom: If that should happen why then of course you would strike this out.

The Master: That is what I do not want to do. If I let it in I want to have it remain in.

Mr. Ransom: By the clearest rule under these cases, as was said in the Keyes case,
5165 where the Attorney General declined to avail himself of just such an offer——

The Master: Was it an offer of records of other companies?

Mr. Ransom: No.

The Master: That is the trouble. If these were records of your company I do not think I would hesitate as long as I have. As I said yesterday, I am predisposed to permit these records to go in, if I feel that they prove anything, and amply protect the defendants.

Mr. Chambers: I think I convinced your
5166 Honor that they do not protect us, and that they do not come within the rule.

The Master: I am not going to force the complainants into a position where they have got to take a year or more to prove facts that are otherwise fairly proved. That is my feeling.

Mr. Ransom: What is your ruling on my offer?

The Master: I will rule it out.

Mr. Ransom: I will have it marked for iden- 5167
tification.

Letter marked Complainant's Exhibit 201, for Identification.

Mr. Ransom: I offer in evidence a copy of a letter dated February 19th, sent on that date to each of the defendants, or the defendant The Attorney General and the defendant Public Service Commission, and on a later date sent to the defendant Swann.

The Master: Some time in June I think that date was.

Mr. Chambers: I object to its introduction at 5168
this time.

Mr. Ransom: As bearing on this question of access and availability.

Mr. Chambers: We except to that offer, and we have never been permitted to examine anything. I didn't get my permit to examine the plans until I got into this trial. I wrote Mr. Garver that I accepted his proposition.

Mr. Ransom: I will put the whole correspondence in evidence.

Mr. Chambers: What is the use of lumbering up the record?

Mr. Ransom: I think it should be in the 5169
record.

Mr. O'Brien: Put it in the record that we never had any examination.

Mr. Ransom: You had full examination.

Mr. O'Brien: Why, under the directions of counsel some of the men refused to say what their names were.

Mr. Chambers: He made the offer and I accepted it, and that was all there was to it.

5170 Mr. Ransom: And the Commission's men came in, and your's should have done the same thing.

The Master: I will refuse to take this.

Mr. Chambers: I didn't have any men or any money.

Mr. Ransom: We are absolutely entitled to show the offer.

The Master: No, I will refuse this. Mark it for identification.

Mr. Ransom: Upon what ground does your Honor refuse it?

5171 The Master: Upon two grounds, first that much of the matter contained in it is a self-serving declaration, and two, that I don't think you can write a letter which is binding upon other companies.

Mr. Ransom: This does not have relation to other companies, this is in relation to the complainant, the Consolidated Gas Company.

The Master: Then you don't have to show any offer of that kind. My position upon this question depends entirely upon whether they are there to look at, not whether you offer to let them see them, because if they are there

5172 to look at I will see that they look at them.

Mr. Ransom: They have been there since some time in May. One of the defendant's staff of accountants has been there ever since the 9th of June. Thousands of these vouchers have been produced and examined by the experts and accountants of the defendant. There is no possible question about that. Now, we are entitled to show that the offer under which

they came there on the 9th of June, after we had started sending them tabulations during May,—the offer on which they came there on the 9th of June was an offer made in February. 5173

The Master: We will get to that in some other form. I am going to have on the record before I get through with it, if it is not there already, and I think it is, the fact that the defendants are in fact examining the books and records of your company.

Mr. Ransom: Since what date? Since the 9th of June?

5174

The Master: That letter will not show the date.

Mr. Ransom: They should have been there a long time before.

Mr. O'Brien: We have been asking for an inventory, and for a statement of the original cost. I would like to be sworn to an interview I had with Mr. Goetz, in the presence of Mr. Davidson on Saturday, where I put up to them, not the privilege of sitting in a cloistered room where they bring in a few books, but the right to go to the offices of the company to see how business is transacted, the right to go to the 5175 branch offices and see the books and records there in the regular course of business, and examine them at will. They have not given us that permission.

The Master: Do you want to mark this for identification, Judge Ransom?

Mr. Ransom: I do.

5176 Letter marked Complainant's Exhibit 202 for Identification.

Mr. Ransom: I shall be glad to offer the entire correspondence showing the various things that have been sent to these defendants, and the various requests they have made, and the compliance with those requests.

The Master: I shall not receive that at this time, because I do not think it bears upon the question I am trying to dispose of.

Mr. Ransom: The thing that is stressed in all these rate cases, is this: If books are
5177 offered, back of which are vouchers, and it appears that the public authorities, as in the Arkansas case and in the Des Moines case, and other cases, have had access——

The Master: Or could have access.

Mr. Ransom: There have been offers of access and they did not use——

The Master: So far as your books and the record and vouchers are concerned, of the Consolidated Company, I agree with you that they have access to them, whether that letter was written in February or June.

Mr. Ransom: Well, the period of it is
5178 material.

The Master: Not for my purpose now. You have in mind the rule about full disclosure——

Mr. Ransom: No.

The Master: I have in mind the particular offer that is being made, as to whether there are books and records to which reference can be made. Now, I have reached the conclusion that so far as your company is concerned, you

have vouchers and original data and receipts and other papers to which reference can be made, so that in that respect you come within the cases. The point we started to discuss was this: Assuming for the purposes of the discussion that I reach the conclusion that these books are within the meaning of the later cases books of original entry, and if I permit them in evidence, in so far as the papers and receipts and vouchers and other records carried into these books are available for inspection, can I extend that to the point of saying that although you have offered them and although you say it can be done, and although the president of some company says that he is agreeable, that the records and vouchers of some other company are available within the meaning of the rule. That is what bothers me. It is not a question of your offer. I can see where the directors of another company might say that they will not allow these men to come and examine their records. 5179 5180

Mr. Ransom: For example, the directors of a company from whom we might purchase coal, or of a company from whom we might purchase stationary—— 5181

The Master: Oh, that would be an entirely different proposition. I said at the outset that so far as these books of account show the amount of coal you purchased, and show the amount of oil purchased, and the amount of labor paid for, and the amount of clerk hire in your various branches, I have not so much difficulty; but when you come to splitting up

5182 the amount of engineering and superintendence expense, based upon the amount of construction work done by other companies, and the accuracy of this statement has reference to the books of other companies, the question is whether I can go so far.

What I would like to have you do is to finish with Mr. Brundage. Mr. O'Brien has indicated several times that he has a suggestion that he thinks might overcome the situation, and it may well be that some suggestion that Mr. O'Brien makes may be the basis of
5183 a disposition which will be agreeable to everybody.

By Mr. Ransom:

Q. Mr. Brundage, do the vouchers of the Consolidated Gas Company in its files show the basis of any charges by the Consolidated Company to any other companies?

A. They do.

Q. Fully?

A. Yes, sir.

The Master: What you mean there, Mr. Brundage, is what you have already said. Take superintendence and engineering, your records
5184 show the amount of construction work you have done?

The Witness: Yes, sir.

The Master: You likewise have a memorandum taken from the books of the New Amsterdam and the Mutal as to the amount of construction work they have done. Isn't that so?

The Witness: As a matter of actual practice, the amount of construction work done by the

other companies is taken from their sworn re- 5185
port to the Public Service Commission.

The Master: But they are not part of your records?

The Witness: No, except in so far as they send me a copy of their report.

Q. What we are trying to get at is what records has the Consolidated in connection with your work charged to other companies for this engineering work, that is assuming, that there were no books and no accounts and no vouchers and no records of any other company in existence, could you from your own records of your engineering department 5186
or otherwise show what charges you should make to these other companies?

Mr. O'Brien: I object to that as calling for a conclusion.

The Master: I will allow the question.

Mr. O'Brien: Exception.

Q. You understand the question?

A. Put it again, please.

Q. Take the case of the Mutual, leaving out—the Consolidated does certain work for the account of the Mutual?

A. Certain construction work, yes.

Q. The Mutual of course has its records of what 5187
work is done, and the Consolidated has certain records. Leaving out of account entirely the Mutual records, could you from your own records tell how much the Consolidated should charge the Mutual?

Mr. O'Brien: I make the same objection.

The Master: I will allow it.

A. The Consolidated's accounts do not show the

5188 amount of construction work performed by th Mutual.

The Master: So that you have got to get som data from the Mutual in order to properly ap portion the superintendence and engineerin expense.

The Witness: If that is to be made on th monthly basis, your Honor.

Q. That is incorporated in your voucher or wit your bill as a part of the voucher on which the bi is made out, this data obtained from the Amsterda is included?

5189 A. There is a record, yes, sir, on which this bi is based, showing the amount of construction pe formed by each of the companies on which this ite is apportioned.

Mr. O'Brien: Where is that record, M Brundage?

The Witness: In the accounting departmen

Mr. O'Brien: What kind of record, wha book is it in?

The Witness: It is not in a book, but in sheet, and shows the amount of constructio work performed by each of the companies an the computation where this engineering an

5190 superintendence item is apportioned to th company.

Mr. O'Brien: Will you produce that this af ternoon sometime, that for the year 1918.

The Witness: Ask the counsel, sir.

Mr. O'Brien: I mean physically is it possibl to do it?

The Witness: Yes, it is a matter of perma nent record.

The Master: Well, now, this sheet or record 5191
that you have now referred to, the data comes from the other companies, doesn't it?

The Witness: In so far as the construction work performed by the other companies, we take that from the Public Service Commission's sworn report.

The Master: That doesn't change the fact.

Q. Is this voucher and bill which goes to the other companies, before it is sent to the other companies, in any way passed on by any of your heads of departments or accounting officers, and if so, by whom? 5192

Mr. O'Brien: I make the same objection to these questions, your Honor. You assume I am objecting to each of them.

The Master: Yes, and the same ruling.

The Witness: Yes, sir, all these charges have been submitted to the engineer of construction, Mr. Morris.

Q. And have been approved by him?

A. I can't say as to that.

The Master: It would be to the interest of the Amsterdam company, for instance, having in mind that the greater their construction expense is the greater their engineering and 5193
superintendence charge would be, to keep down their construction expense, wouldn't it?

The Witness: Yes. Your Honor, you understand this item they are discussing is a comparatively small item.

The Master: Yes, it is only the small items that are bothering me.

The Witness: A great deal of feeling here

5194 regarding the accuracy of this item, and this is a small item which has to be split up on some basis or apportioned on some basis.

The Master: I appreciate it is the small items that bother me, but I have got to have this record right.

Q. What you are referring to is called the engineering and superintendence item?

A. Yes.

Q. It does not refer to the cost of the work?

A. It refers to the engineers in the department of construction, and includes Engineer Morris and
5195 Engineer Ahrich and Engineer Hunter and two or three stenographers that are assigned to that department.

Q. Does it have anything to do with the cost of the work, the cost of labor and material and so on?

Mr. O'Brien: I object to it as leading.

The Master: I will allow it.

The Witness: I did not follow that question.

Q. I mean it includes simply the proportion of the services of these three or four or five persons you have named?

A. Yes, the salaries paid them, sir.

5196 Q. It has nothing to do with the cost of labor and materials for the construction work itself?

A. Except in so far as that the construction work performed is the basis of the apportionment.

Mr. O'Brien: Well, the same thing applies to drafting work and other kinds of work in the intercorporate relations between the complainant and these companies?

The Witness: No, counselor, I have just ex-

plained to you that all the drafting work and 5197
all the field engineers' work done for other companies, there is an accurate record maintained and sent to the accounting department and billed accurately.

The Master: Now, I will hear you on this question, Mr. O'Brien. I would like to have you, if you will, not argue so much the objections as to give me your views as to what ought to be done, having in mind that it is going to be my attitude to shorten this trial if it can be done.

Mr. O'Brien: Your Honor, I will say that I 5198
shall try not to be discourteous, but I would like to say at the outset that the defendants——

Mr. Hayward: The witness is not leaving the stand.

The Master: Do you want to ask something? Let's get through with the witness before we hear any discussion.

Mr. Hayward: I want to cross-examine on this question which seems to be of great importance here.

The Master: Go ahead.

CROSS-EXAMINATION BY MR. HAYWARD: 5199

Q. Now, Mr. Brundage, I understand the other day that you said, with the exceptions you enumerated, the books of this company had been kept in strict accordance with the uniform system of accounts as prescribed by the Public Service Commission, which Judge Ransom has been talking about?

A. I did.

5200 Q. You enumerated those exceptions?

A. Yes, four or five.

Q. I will ask you the same question, I ask yo
are there any others than those you have previous
mentioned, that you would now like to tell th
Master of, in which you have not followed the rul
of the uniform system of accounts?

A. I should say not, Colonel.

Q. You think you have covered them?

A. I do not recall anything else that I have n
covered.

Q. And where you found—in addition to th
5201 places where you have not complied with the u
form custom of accounts as to the accounts th
they required you to keep, have you kept other a
additional accounts independent of your unifor
system of accounts—subordinate account for——

A. (Interrupting.) Yes, the accounting syste
allows us to keep divisional accounts, if you wi
and we have had occasion to do that.

Q. And you have done that?

A. Yes.

Q. And in connection with that are you prepar
to say whether or not you have complained wi
the law in connection with those addition
5202 accounts?

A. I do not follow your question.

Q. I will read you paragraph four of the Orde
I don't know whether it is offered or identified, yo
Honor, but it is the order of the Public Servi
Commission of January—requiring the unifo
system of accounts to be in vogue after January
1919, paragraph four referring undoubtedly, if
am mistaken, you correct me to these addition

accounts you are now speaking of. It says as fol- 5203
lows, "For purposes of improving the efficiency of the administration and operation, any corporation may unless or until otherwise ordered keep upon its books any temporary or experimental accounts and any accounts covering particular divisions of its operation." Now, those are the other accounts that you are referring to, as I understand it?

A. Yes.

Q. And the proviso follows: "Provided that in respect of each such temporary, experimental or divisional account, the said corporation shall file with the Public Service Commission at least ten 5204
days in advance of the time when the said account is to be instituted, a statement showing the name of the said account, the date when it is to be instituted, the purpose for which it is to be kept, the period of time during which it is to be kept, and a clear and accurate definition of the classes of items and facts to be contained in the said account, and in case of a divisional account, the definition of the division covered. Upon compliance with the provisions of this paragraph, any account prescribed or defined in either said Schedule A or said Schedule B may be subdivided". Now, are you prepared to state that the company has complied 5205
with that requirement of the uniform system of accounts in connection with these other and additional accounts you have testified to?

A. I recall, counselor, that when the system of accounting first came out, there was some correspondence between the Commission and the Company.

Q. I did not ask you about that. You can say

5206 yes, or no. I am trying to be fair with you. Ca
you say whether or not——

A. (Interrupting.) I want to be fair with yo
too.

Q. Yes, I think you are. Can you say wheth
or not, for instance, these are the additional a
counts you testified to?

Mr. Ransom: Do you mean additional
divisional? They are two different things.

Mr. Hayward: I mean that they are ad
tional accounts to the accounts required
the uniform system of accounts. The witne
5207 understands me, if you do not.

Mr. Ransom: But you are one minute usi
one term, and the next minute the other ter

Mr. Hayward: Well, I use them synon
mously.

Mr. Ransom: The Public Service Law pr
vides for additional accounts, and the Co
mission has also authorized divisional a
counts, and there is an exact provision wi
respect to additional accounts.

Q. I will ask the witness, Such other tempora
or experimental or divisional accounts as the co
pany has instituted, has the requirement of the la
5208 been complied with in connection with those a
counts?

A. Does the law require us to file with the Co
mission word of the establishment of a division
account?

Q. Yes, for ten days prior.

A. If that were the case, I should say no. Ma
I point out a case to you.

Q. Certainly, I am only trying to get the facts, 5209
Mr. Brundage.

A. I want to put that on the record very frankly. For instance, the Public Service Commission system, as I said the other day, does not provide for an account under the title of assessments levied by a municipality, for instance, for street grading or something of that sort. Now, an accounting man——

The Master: That is not one of those accounts.

The Witness: It is one of the items I spoke of.

The Master: It is not one of these that Mr. 5210
Hayward in speaking about?

The Witness: Oh, yes.

The Master: No, that is not experimental, and it is not additional.

The Witness: It is divisional.

The Master: No, it is additional.

The Witness: It is divisional, your Honor.

Q. It is temporary?

A. No, it is a permanent item.

Q. It is not experimental or temporary. What is the division?

A. Because an accountant would construe that 5211
the company's—the Commission's accounting system where it gives us an account, "Land devoted to gas operations", the total cost of the land so acquired, an accountant would construe that the assessments paid to the municipality for permanent improvements to that land would be a proper item to capitalize under that title, and just as a matter of convenience we keep a strict separate account of

5212 assessment, but we may construe and would construe that we are complying with that accounting system under that title.

Q. Well, then, that is a divisional account?

A. I should call it a divisional account, and if you asked me if we have complied with the Commission, I should say no.

Q. You have not complied?

A. No, I would say that divisional item has not been reported to the Commission. May I say, Colonel, that while we did not specifically apprise the Commission of that, every annual report that
5213 we filed, that particular item stands there as an item, and it is subject to their jurisdiction and explanation.

Q. There is a provision to notify the Commission beforehand, in order that they may consult with you if necessary?

A. Yes.

Q. And you did not comply with that?

A. We did not with respect to that.

Q. Now, very briefly taking up some of these items which we find under the list of accounts under Schedule A, I am now reading from the index of the "Indicant Accounts". That means, doesn't it,
5214 the titles indicating the character of the particular accounts kept as defined by the Public Service Commission?

A. The Commission when they used the term "indicant accounts" mean the balance sheet accounts.

Q. They require certain accounts to be kept in this uniform system of accounts?

A. They do.

Q. And they require those accounts to have a 5215
title?

A. They do.

Q. And the definition is set out as to what that title embodies and implies?

A. And what is to be charged in that account.

Q. And what is to be charged in that account, they define it?

A. Yes, sir.

Q. That is what they call Indicant account, this list of names in Schedule A, with which you are familiar?

A. Yes, that is the balance sheet account.

Q. Now, let us get down and take up the item 5216
which I pick out, called "holders". Now, this item "holders", turn to that book, what is the number?

A. This operating ledger, Section A.

Q. Turn there and see if there is any holder account kept in there. Was there an account called "Holder Account"?

A. If there were any holders built subsequent to December 31, 1918, it would be in here. If it was all the holders the Company had December 31, 1918, it is carried as part of the company's capital December 31, 1908.

Q. And the account of that would not be in this 5217
book?

A. Except buried in the big company's Capital Account. For example——

Q. Just wait a minute; wasn't it just for the purpose of keeping items like that from being buried that the Public Service Commission provided this uniform system of accounts, so that these several items could always be reached and identified?

5218 A. They did that very thing, effective December 31, 1908.

Q. Yes.

A. But the Commission's system distinctly provided that all of the Company's assets as carried on its books as of December 31, 1918, were to be grouped in one, what we call in accounting practicing one omnibus account in the same manner and same titles as carried on the books when this system went into effect, and in view of that order, we sent up the account, "Fixed Capital December 31, 1908", and put in all of the assets shown upon our
5219 reports.

Q. Then suppose an ordinary man, not an expert accountant, went on a still hunt for holders?

A. Yes.

Q. Where would you find it in the books?

A. Holders.

Q. Yes.

A. He would be obliged to determine what holder he was asking about, and in the case of our company, I would say 63rd street is the holder, and he would turn to this figure.

Mr. Ransom: Indicating page 1.

The Witness: Page 1.

5220 Mr. Ransom: Operating ledger A?

The Witness: Operating ledger A.

Q. Well, now, then, you would have—how would you find, or would you go and look for some particular holder that you are interested in, such as Kingsbridge holder?

A. Yes.

Q. But if you were just interested in holders, you could not find it?

A. No, except by chasing through and finding 5221
out what the location was. You can imagine, counselor, the many——

Q. Will you do me a favor, Mr. Brundage.

A. I want to get it clear to your own mind, that is all.

(Discussion off the record.)

Q. So that in these books, as they have been produced here, there is no account with the indication "holder" attached to it, or in the index of it?

A. No, I would not say that. Now, there is no account under the title of Holders representing 5222
construction during the year 1918, for the reason that no holders were built during that year.

Q. Well, then, have you got any book at all, or any ledger in which you could find the holder account, even carried over from the previous year?

A. Yes.

Q. Are they here in this set of books that you have here?

A. Not in the exhibits here. These only refer to the work done during the year 1918.

Mr. Ransom: Is the general journal and general ledger——

The Witness: They are not marked. They 5223
summarize all the construction work.

Mr. Ransom: They are books of secondary entry.

Q. Now, let us take the next item, furnaces, boilers and accessories.

A. Yes, sir.

Q. And see if there is an item——

Mr. O'Brien: I move to strike out that statement "then they are books of secondary

5224 entry". It is leading and it is contrary to the testimony of the witness, because in some cases it is not tertiary, or if I knew the term from the tenth degree removed from the original record, I will use it.

The Master: Well, I won't disturb the record because it does not really make any difference what Judge Ransom called it.

Q. Turn to the index?

A. You asked me about furnaces, boilers and accessories. They carry such an account here, it is in the index marked "Furnaces, boilers and acces-
5225 sories 21st Street station, folio 62".

Q. Yes.

A. We turn over to folio 62 and we find the account "Construction 21st Street station, furnaces, boilers and accessories", showing certain charges during the years for construction work performed in that connection.

Q. In any of the other books are there accounts covering the other plants, boilers, furnaces and accessories?

A. The books in evidence?

Q. Yes.

A. No, because during the year 1918 there were
5226 no other construction work performed chargeable to that account.

Q. Now, turn back to the index?

A. Yes, sir.

Q. I call your attention to the column in the index and ask you if that index column was kept in the usual course of business?

A. It was.

Q. It appears to be all in one handwriting?

A. Not two, there are several. 5227

Q. Well, I mean except with a few exceptions?

A. Yes.

Q. That is in a different handwriting and in a different kind of ink?

A. Yes, some of them appear to be.

Q. And this one that you have referred to, furnaces, boilers and accessories, is in a different handwriting and in a different kind of ink and obviously put in at a different time?

A. Yes, sir.

Q. Now, may I ask you whether or not that entry was made in the usual course of business? 5228

A. It was.

Q. If so, why does the handwriting and the ink differ from all the others?

A. Because this index was made when the ledger was opened as of January 1st, 1918, and reference to page 62 shows that no charges were applicable to this account until November, at which time the bookkeeper who kept this ledger had gone and the new bookkeeper had taken his place, he opened the account and put it in this index in November, 1918.

Q. And that of course was not put in the index, Mr. Brundage, was it on page 62, when the book was opened, that printing? 5229

A. No, that was entered when the account was opened.

Q. You don't mean to say 11 of these other entries that were made in the usual course of business and appear to be in this one handwriting, were made before this was opened?

A. I do.

The Master: In other words, there were some matters that were carried in and opened im-

5230 mediately on the 1st of January, because you knew you would have that account?

The Witness: They all had balances carried forward from the preceding ledger. This account was not opened until this year, because we had no charge in it until that time.

Q. And the balances brought forward you testified are simply copied from other books?

A. Copied from a ledger of the same measure for the preceding year.

Q. Now, look under steam engines?

A. I find no such account for the year 1918.

5231 When we go into the no charges applicable to that account——

Q. Look under water, gas sets and accessories?

A. I find it in the index, "Water, gas sets and accessories 21st Street station".

Q. And you find that in the same handwriting and same kind of ink as the other items I asked you about, "Furnaces, boilers and accessories"?

A. I should say so, yes. Indexed on folio 63 account opened in October, 1918.

The Master: No balance on January 1?

The Witness: No, sir, whatever balance was carried in the construction accounts.

5232 Q. Turn back to the index and look at "Accessory equipment at works".

A. I find a number of such accounts. "Accessory equipment at works 14th Street, 42nd Street, 21st Street, Kingsbridge".

Q. They are separately stated for each station?

A. Yes, for each station.

Q. That is all I want to know. But in many o

the other accounts they are not separately stated for the several stations? 5233

A. Oh, yes, all our construction work is recorded by stations.

Q. In this book?

A. Yes, sir.

Q. My recollection was there were items where a consolidation was made of the reports from several plants. Is that not your recollection?

A. We keep our construction accounts by stations.

Q. Trunk lines and mains?

A. I find that on folio 105. 5234

Q. Under what heading?

A. Street mains.

Q. Then you have not separated your trunk lines and your trunk mains from your branch lines?

A. Well, I don't draw the distinction that is apparently in your mind.

Q. I say the uniform system of account requires an account of trunk lines and trunk mains, and you say that your item street mains covers that?

A. I do. It covers all street mains.

Q. Why don't you use their title? What is the difference?

A. Let me look at their list. They give you one account there and they call it trunk lines and mains. We have used the caption "street mains". 5235

Mr. Ransom: Were there any trunk lines or mains in 1918?

The Witness: Why, we laid the mains in 1918.

Mr. Ransom: Trunk lines.

5236 The Witness: I don't know the definition, o the distinction technically between trunk line and any other kind of a main.

Q. I will read the definition of trunk lines an mains.

Mr. O'Brien: Have you made a distinctio in your books for different kinds of mains?

The Witness: We have one account, Stree Mains.

Q. Let me read this definition——

The Witness: And I think the accountin system gives you one account. I only see 5237 little difference there in nomenclature, that is whether you call it trunk lines and mains, o street mains.

Q. What I am trying to get at is, does this ac count include all the mains or pipes that the com pany laid in the streets during this year?

A. It does.

Q. Under the title "Street Mains"?

A. "Street Mains".

Q. Now,——

A. Everything, of course, excepting services, fo which there is a separate account.

Q. Now, for my information, would you tell m 5238 whether in your opinion this definition and require ment of the uniform system of accounts, the title o which is "Trunk Lines and Mains", means any thing different?

A. I don't know. I want to find out.

Mr. O'Brien: Of course, your Honor is per mitting my objection to be recorded here?

The Master: Yes.

Mr. O'Brien: I never bow to the holiness or 5239
sanctity of this uniform system of accounts.

The Master: Well, the Colonel is asking these questions for the purpose of attacking it.

Mr. O'Brien: I want to reserve my rights for one of the defendants, so that it won't appear that I have been inconsistent.

The Master: The objection will be noted and overruled.

Mr. O'Brien: Exception.

The Witness: We charge to this account, which we call "Street Mains", the identical charges directed in the Public Service Com- 5240
mission's rules under the title of "Trunk Lines and Mains".

Q. Well, then, why don't you use the title which they require you to use?

A. Well, I can answer that question, Colonel. The term "street mains" is as old as the gas business, one hundred years.

Q. You like your definition better than theirs?

A. Yes, just a variation in nomenclature.

The Master: Well, then, it is not a question of definition; it is a question of title.

The Witness: The requirement has been exactly complied with. 5241

Q. The requirement is to have the title entries made within the definition.

The Master: Well, he says the items entered under "Trunks and Mains" are precisely the same as he carries under "Street Mains".

Mr. Hayward: Well, that don't bring it under the heading.

The Master: Has the Public Service Commission ever objected to your designating

5242 these street mains instead of trunk lines and mains?

The Witness: They have not.

Q. "Gas meter installation"?

A. Gas meter installation under the Public Service Commission is a capital account reckoning the original first cost of setting a meter in the district. The Consolidated Gas Company does not follow that practice, it being optional under the Commission's system to capitalize or charge to operating expenses or cost of installation of meters, and it is always charged to expenses in these accounts.

5243 Mr. Ransom: Have you in these books any heading of that kind?

The Witness: No sir, we have under operating expenses "setting meters" charged to operating expenses.

Q. But that is not in this ledger?

A. That is in the other section of that ledger.

Q. And identifiable in there?

A. Yes, sir.

Q. How about "Municipal Street Lighting and Gas Fixtures"?

A. There is no such account in our system, because it is not needed. In the city of New York

5244 the street lamps are owned by the city.

Q. So you have no such account?

A. We have no street lamps. In fact, there are no more gas street lamps on Manhattan Island.

Q. You have no gas engines?

A. Yes, the accounting system has an account they call "Gas Engines Leased", I think is the title and it provides what shall be charged therein. We call that account "Gas Appliances Rendered",

folio 172. Gas Appliances Rendered we call that 5245
account, sir.

Q. That is the nearest of any account you have to this requirement of gas engines?

A. There is charged to that account the exact items that are specifically provided to be charged there, under a slightly different term of nomenclature, under this wording.

Q. Well, then, if anybody on a search for gas engine account—they would have to go to you to get this information, or somebody else having that information?

A. No, he would not. 5246

Q. It is not clear on the face of it, is it?

A. I should say it was. Any one reading the text of the account as provided by the Commission would know where to look for it in the index of accounts.

Q. Well, now, what does that Gas Appliances Rendered include?

A. All of the appliances owned by the company and placed in the District under rental.

Q. Well, then, it includes much more than this item of gas engines?

A. No, you will find a provision there, sir, as to where these items are to be charged. 5247

Q. Charged to this account, the cost of all engines devoted to the use of prime movers, gas works and stations?

A. You are looking at an entirely different account. You have turned up an account "Gas Engines" in the Plant Account. A gas engine in a gas plant, you see, the motive power, and the item

5248 to which I am referring you will find over her
(indicating).

Q. I will go back to my original question. Hav
you got this account which is provided here, "Ga
Engines"?

A. This account?

Q. Yes.

A. We have not, because we do not use them.

Q. You could say that much more simply.

A. We were talking at cross purposes.

Q. Benches and retorts.

A. Capital account. I found no such charge
5249 during the year 1918, therefore there was n
account.

By Mr. O'Brien:

Q. Don't you carry it over from the other year

A. Yes, we do, summarizing these items in on
account, "Fixed capital since December 31st, 1918

Q. Well, you carried over a good many othe
accounts, didn't you, into that book, in which yo
made no entry for 1918; why not this one?

A. I have carried this balance forward—ever
balance was.

Q. You just answered Col. Hayward that you d
not have any account for that year.

5250 A. Certainly, we have no charges in that accou
for this year.

Q. You are changing your term now. Is the
an account in that book for the year 1918?

A. No, we had no charges for that account durin
the year 1918.

Q. Why haven't you got even the balan
recorded there, since you record every oth
balance?

A. All the balances of all construction accounts 5251
are carried forward in this ledger, but are summarized for matter of convenience in this account.

Q. Is that summarized there?

A. That is summarized—buried in here.

Q. Buried?

A. Yes, it is.

Q. It is a burying ground, after all?

A. If you want to use that phrase.

Q. You used it?

A. Perhaps it is not an apt expression.

The Master: We do not want any more of that.

5252

Mr. O'Brien: He said it is buried.

By Mr. Hayward:

Q. Let us see if we can find it. The thing Mr. O'Brien is asking you about, I mean. You say it is buried, let us dig it up.

A. To do so you would turn up the account at whatever station it was, and here you would find your accounts listed by years (indicating), summarizing all the construction accounts. We will take the item, if you will, one of the items of construction work at the 14th Street station in the year 1916 was furnishings, boilers and accessories, and you go back to the 1916 ledger and you find 5253
that account set up. And in that year that account is carried in one pot account, if you might call it that—we use it in accounting—for the 14th Street station.

Mr. O'Brien: What is the word, Mr. Brundage?

Mr. Hayward: Pot account.

5254 Q. I would like to know how I would find that item here?

A. Go back to the year that the construction took place.

Q. How would I know what year it took place? I am a stranger, I have not been there for thirty years.

The Master: I am not going to permit that, for this reason: I permitted an inquiry of this witness to show whether he was keeping certain accounts under the titles required by the Public Service Commission.

5255 Mr. Hayward: He has shown that he is not.

The Master: You have brought it all out, I think. I am not going to let you go into how you as a stranger could dig up an item. He has explained just what he does. Some items he explains he calls street mains or trunk lines or mains.

Mr. Hayward: I am trying to show, if the Master please, whether the very purpose for which the uniform system of accounts was established, and which Judge Ransom says they have adhered to and on which he places a reliance—whether that purpose which was to

5256 permit running down these accounts has been as a matter of fact carried out by this company or defeated, and I contend it was defeated.

The Master: You were talking about retorts, weren't you? You were talking about benches and retorts.

By the Master:

Q. Section 24 speaks of definitions of fixed capital accounts, Col. Hayward. The first subheading is "Fixed Capital, December 31, 1908."

The next paragraph is headed, "The Following 5257
Capital Accounts are prescribed for transactions subsequent to December 31, 1908", talking always of fixed capital accounts, land devoted to gas operation, franchises, patent rights and other things, coming down to benches and retorts." Have you got a fixed capital account?

A. We have.

Q. And have you a bench and retort subdivision of that?

A. We have.

Q. Where is it?

A. We have nothing standing out in that type 5258
in this ledger, because we did no work of that kind in 1918.

Q. But you refer to a fixed account here in regard to that.

A. We have.

Q. And as a subdivision of that you have the benches and retorts account. Have you got a "Patent Rights" account in your fixed capital?

A. We have not. There is no such asset on the company's books.

Q. Have you got an equipment account, office equipment, in your fixed capital?

A. Yes. 5259

Q. Where is that?

A. What they call their office equipment account we keep under the title of furniture and fixtures.

Q. Shop equipment?

A. Yes, sir.

Q. Where is that?

5260 A. Buried right here in all this Furniture and Fixtures.

Q. You have that under "Furniture and Fixtures"?

A. Yes, sir.

Q. Works and Station Structures?

A. Whatever existed at December 31, 1908, unless withdrawn since then, is included in the old omnibus account filed with the Commission. The plant included the works and station structures. The construction work since that time has been charged to that account and at the end of the

5261 year——

Q. You are showing me now on this Exhibit 189, for Identification, "Fixed capital December 31, 1908"?

A. I am.

Q. Does that mean that that was its condition on that date?

A. It does not. Those are the balances of December 31, 1908, less the withdrawals of capital.

Q. How about additions?

A. Additions are carried in the subsequent accounts since December 31, 1908. There you find fixed capital installed December 31, 1908. In the

5262 ledger for the year 1909 you will find all the construction accounts listed in accordance with this system, and at the end of the year summarized here (indicating).

Q. In other words, there is another book that has the subdivisions referred to by Col. Hayward?

A. Another ledger just like this, your Honor, going back for each year.

Q. A general ledger?

A. An operating ledger. 5263

Q. Isn't there a general ledger?

A. There is a general ledger.

Q. This, as I understand it, Exhibit 189, for Identification, is an operating ledger?

A. Yes, Section A, 1918.

Q. You have a general ledger?

A. Yes.

Q. Do you carry items from your operating ledger to your general ledger?

A. It does go from the operating ledger to the general journal and from the general journal to the general ledger.

Q. In making up reports for the Public Service Commission, you use the operating ledger or general ledger? 5264

A. We use this operating ledger.

Q. Then how do you subdivide in accordance with the directions of the Public Service Commission the various items required by their rules? In other words, you do not have here the bench and retort account that they require.

A. The P. S. C. Annual Report, your Honor, requires us to show the balance on hand in a given account at the beginning of the year, plus the additions during the year, less the withdrawals. 5265

Mr. O'Brien: We want the witness to testify, not Judge Ransom.

Mr. Ransom: I am not testifying.

Mr. O'Brien: You are presenting the Master now a record for his approval.

The Master: It is just a copy of a report.

Mr. O'Brien: It makes no difference, your Honor. All those things couch the witness.

5266 Mr. Ransom: The witness has not seen it.

Mr. O'Brien: You may as well have that understood now.

The Master: You need not be afraid of coaching the witness. This kind of a case is entirely different from a negligence suit, you know.

Mr. O'Brien: The witness' knowledge of these books is the crux of this examination.

The Master: No, it is whether the books are kept in accordance with the Public Service Commission's rules.

5267 Mr. Hayward: There may have been an additional requirement in connection with that; I do not know; but what I am trying to find out is whether these books were kept so that an ordinary human being could go in there and find these items under these separate titles, because that was the purpose of the uniform system of accounts.

The Witness: May I answer that?

The Master: You ought to be able to find the accounts required by the Public Service Commission.

The Witness: May I answer that?

5268 Mr. O'Brien: Not without my objection. This symposium is not proper procedure.

Mr. Hayward: I could not do it. I will say to the Master that I made a diligent effort to do it without the assistance, and now I am not making out very much better with the assistance of the witness.

The Witness: But your witnesses had no trouble finding that.

The Master: Will you explain, Mr. Brun- 5269
dage, and I have in mind only the point Mr. Hayward is working on—this order of the Public Service Commission requires a fixed capital account.

The Witness: It does.

The Master: And as a part of it a bench and retort account?

The Witness: No, I would not say that.

The Master: Why not?

The Witness: Because they gave us an account that they call Fixed Capital December 31, 1908. That is the title of the account, and 5270
we were required to charge to that account all of the Company's plant, assets and land as they stood on the books of the Company at that date, and we, therefore, put them in here in accordance with their order as they then stood, and under the titles as they then stood.

By Mr. Hayward:

Q. Then this item coming along since 1908, Benches and Retorts, since 1908, that is what the Master is inquiring about, as I understand it?

A. Any benches or retorts built subsequent to 1908, would be charged to that account and together with other charges for other construction at 5271
a given plant would be grouped in this account "Fixed Capital since December 31, 1908", for which the Commission gives us no account, but in their annual form of report requires us to furnish it.

Q. But they have given you an account?

A. I know they have.

Q. But you do not follow it?

A. Yes, we do follow it.

5272 Q. I do not see how.

A. I have just shown you several of those accounts.

Q. May I ask you, if the Master please, to show this account headed "Benches and Retorts"?

A. And I have said to you, Mr. Hayward, that we made no charges of that account during the year, because we did no such construction.

Mr. O'Brien: You have not explained it. You have not explained that you carried forward, the same as you did the other forms of accounts, even though there was no particular
5273 entry to be made of a transaction as of 1918.

The Witness: I have explained that.

Mr. O'Brien: We can take that up after recess.

The Master: I am not going to waste any more time on that. These books you have here are the operating ledger, operating journal, treasurer's cash book and what else?

The Witness: The Sundries ledger, four sundries' blotters; sundry creditors' ledger, distribution of payrolls and the vouchers and records.

Mr. Ransom: I think perhaps I ought to
5274 offer in evidence now that payroll summary.

The Master: We will take it up after lunch.

Mr. O'Brien: Your Honor, can we adjourn until tomorrow. I want to say these six hour stretches are an awfully severe tax on everybody, and I think we——

The Master: Yes, they are on me too, but I arranged for this week, and counsel figured on it, and we will have to go through this week.

Mr. Hayward: Before the witness goes there 5275
is one very short question I would like to ask.

The Master: Before we adjourn.

Mr. Hayward: Yes.

Q. The uniform system of accounts provides for keeping what is known as a surplus account in some books, doesn't it?

A. The uniform system of accounts fails to provide an account divisible into surplus, profit and loss, or any corresponding term.

Q. You keep it as profit and loss?

A. We keep it as profit and loss.

Q. Don't they provide that it be kept as surplus? 5276

A. They do not. They refer to it in several of their wordings, but there was a very serious omission in making up that wording. They failed to provide for it.

Mr. O'Brien: Well, you were at the conferences in which it was provided for, weren't you, Mr. Brundage?

Mr. Hayward: I will look that up at noon hour. I think there was a provision for surplus account, but they never complied with it.

Recess.

AFTERNOON SESSION. 5277

HENRY M. BRUNDAGE resumed the stand.

Mr. Hayward: I have just one question.

By Mr. Hayward:

Q. You remember we were talking about what I said was the requirement calling for a surplus account, when we adjourned for luncheon?

A. Yes.

5278 Q. You said there was no such requirement?

A. I said there was no such account, counsellor.

Q. Do you mean there was or was not in the uniform system of accounts, a requirement for you to keep such an account?

A. I mean that the uniform system of accounts fails to provide for an account under that or any corresponding title.

Q. And you did not keep any?

A. We kept an account under the title of "Profit and Loss".

Q. Profit and Loss, but not under the head of
5279 "Surplus"?

A. No, sir.

Q. And not under the head of "Surplus and Deficit"?

A. No.

Q. I will ask you to look on page 59 of this pamphlet, paragraph 24, and see whether or not the fair interpretation of this uniform system of accounts, with an honest effort on your part and the part of the company to comply with it, would not have required your keeping what is set out in paragraph 24, called a "Corporate Surplus and Deficit Account" (referring to Complainant's Exhibit 15
5280 page 59)?

A. My answer would be that we did make an effort, and we did carry out the provisions of the accounting system, and we did close our operating revenue and operating expense account into an account which is of the nature defined in that interpretation, and we called the account, as we had for years before the Commission was established, "Profit and Loss Account". I again repeat that

the accounting system did not provide any account 5281
by that title or any corresponding title.

Q. You call it Profit and Loss account, notwithstanding paragraph 24?

A. Yes, sir.

The Master: Are there any further questions?

Mr. Hayward: I have nothing more.

The Master: Has Mr. O'Brien anything more?

By Mr. O'Brien:

Q. Do you want to revise your statement as to the purchase of gas by the Central Union or North- 5282
ern Union Gas Company or Westchester Lighting Company from the complainant company?

A. No, I know of no reason why I should.

Q. You asserted it with a great deal of positiveness this morning?

A. Yes.

Q. Can you explain these payments here as recorded in the treasurer's book on pages 85, 101, and other pages? Take page 85, a payment by that company to the complainant company.

A. Of course, I am unable with this information before me to determine what that item was for.

Q. That is your answer? 5283

A. Yes, sir.

The Master: How can we find out?

The Witness: This is credited to the Central Union Gas Company in the Sundry Debtors Ledger. If you will turn to the Sundry Debtors Ledger, you will find that item posted to the credit of their account. On the debit side of the account you will find what charges were made against that company.

5284 Q. The page in the Sundry Debtors Ledger in which you say this credit will be recorded is not noted in this cash book, is it?

A. No.

Q. In fact, none of the credit items here refer to any other book, do they?

A. No.

Q. They are blind so far as any further reference is concerned?

A. The details are set forth in the Sundry Debtors' Ledger, the item to which you refer——

Q. I say there is no reference to the page.

5285 The Master: I am testing something here Mr. O'Brien.

The Witness: This particular item is a payment of cash by the Central Union Gas Company to the Consolidated Company, properly posted to the credit of the Central Union Gas Company under date of February 21, 1919 $26,800.24.

The Master: What for?

The Witness: In payment of various charges against them.

The Master: Of what character?

The Witness: Well, for the use of facili-

5286 ties——

Q. Read them off, don't be afraid of them?

Mr. Ransom: I object to that statement of counsel. There is no indication that the witness is afraid of them. As a matter of fact counsel has tried to prevent their going in.

A. For the use of facilities, for the operation of Kingsbridge holder——

Q. Expense in operating the Kingsbridge holder? 5287

A. Yes. It is for promotion expense.

Q. Does that refer to any kind of promotion?

The Master: I am trying to find out something, Mr. O'Brien. Just let the witness finish with my question.

The Witness: Here is another item (indicating).

Mr. O'Brien: Read them all. I do not want you skipping around.

The Master: I am asking a question, Mr. O'Brien. You are not asking the question.

Mr. O'Brien: It will save time, because I 5288
will go all over that ground myself.

The Master: No.

The Witness: From construction department payrolls to chemical department.

By the Master:

Q. Is there any item there for the sale of gas?

A. No, there is not.

Q. What is this Kingsbridge holder? What has that reference to?

A. That is a holder at Kingsbridge operated by the Consolidated Gas Company and owned by them, and a part of the cost of operating the holder is billed to the Central Union Gas Company. 5289

Q. Why?

A. Because it is operated partly for their benefit.

Q. Don't they get gas out of it?

A. They do.

Q. How does that gas go? Don't you get paid for that gas?

A. Not to the Consolidated.

Q. Whose holder is it?

A. The Consolidated owns the holder.

5290 Q. Who makes the gas that is in that holder?

A. That will be an engineering question, your Honor, that I cannot answer, as to just which gas gets into that holder.

Q. Do you know why it is charged to the Central Union?

A. For the use of the holder? Part of the cost of operating that holder is charged to the Central Union Gas Company.

Q. Do you know why?

A. Not from a technical standpoint. I do know that holder is operated partly for the benefit of the

5291 Bronx companies. An engineer could answer that question better than I could.

Q. Where does the Central Union Company operate?

A. In the territory adjacent to Kingsbridge, to the east and north.

Mr. Hayward: Up in the Bronx?

Mr. Ransom: We can show that by an engineer who is familiar with those things.

Mr. O'Brien: That's all right, this is a matter of accounting.

Mr. Chambers: He charges for the land there.

5292

The Master: I am still questioning.

Mr. Chambers: They charge for the land. I want to have that noted, your Honor.

The Master: That is not very important, but I wanted to clear this up while I was at it. It is not important on the question of the admission of these books anyhow, but I had him refer to the item merely for the purpose of testing

the books, to see what supported them and 5293
where we landed.

Mr. Hayward: If it takes an engineer to explain the books, it seems to me it is important.

Mr. O'Brien: It is another way of spelling out something, that is all. The witness made a positive statement, and that goes to his credibility, his reliability as a witness in this case, and I put that thing so clear to him it could not be misunderstood.

Mr. Chambers: We can go on and show that the books are absolutely incompetent at this time? 5294

The Master: I don't know. You had something you wanted to ask the witness about?

Mr. O'Brien: Yes.

By Mr. O'Brien:

Q. Turn to page 85.

The Master: What is your question about page 85?

Q. Doesn't that show a payment to the Central Union Gas Company?

The Master: A payment to or by?

A. It does not. It shows a payment by the Central Union. This is the receipt side of the cash book. 5295

Q. Yes; payment by; I stand corrected. And the amount?

A. $28,273.23.

Q. Then there is something for which that company pays the Consolidated Gas Company money, isn't there?

A. Yes, sir.

Q. Do you know what it is for?

5296 A. I do.

Q. Do you know without consulting the Sundry Creditors' Ledger?

A. Yes, if you do not want any figures. It is for the use of certain facilities in the Borough of The Bronx owned by the Consolidated Gas Company.

Q. How is that amount determined? It is not a certain percentage of the payroll up there, is it?

A. I said that this referred to——

The Master: Suppose you let the witness answer one question at a time. You asked him how that was determined, now, let him answer
5297 that, and that is all I am going to let you ask at this time.

The Witness: There are certain large mains in The Borough of the Bronx owned by the Consolidated Gas Company and under an arrangement with the Central Union Gas Company a monthly charge is made for the use of those facilities, and the Central Union pays those bills monthly, and this cash to which you refer paid that item and other miscellaneous items, as I have testified.

The Master: That is all we are going to have on that. I am going to find out whether these
5298 books are in.

Mr. O'Brien: While you are there, I call your attention to the whole account, your Honor, of the Central Union Gas Company. It will save a lot of questions. I call your attention to that in the sundry creditors' ledger and also ask the witness——

The Master: We won't ask the witness anything.

Mr. O'Brien: I want to ask him about the payments made by the New York and Queens Company. 5299

The Master: That goes to the same line of questions. It is not necessary for our purpose at this time.

Mr. O'Brien: They only emphasize the points embodied in our objection.

The Master: Yes, that is what I say; it is not necessary to emphasize them any more. You have got them.

The Master: What did Jacob Fratus do? Was he an accountant or something of that kind? 5300

The Witness: Evidently a charge made by him in the Consolidated's account with the Central Union, paid by us for their account, and billed to them.

The Master: So that you acted as sort of a banker for some of these companies?

The Witness: I would not call it a banker, but as it occasionally happened, a bill came in which was part of it applicable to the other companies, and we paid the bill and billed the other companies their share.

REDIRECT-EXAMINATION CONTINUED BY MR. RANSOM: 5301

Q. Mr. Brundage, you were asked at the hearing on Monday, or I guess in fact last week, by Mr. Hayward, with respect to the time when annual reports were filed by the company with the commission?

A. Yes, I was.

Q. Does the commission each year by order pre-

5302 scribe the date on which annual reports shall be filed?

Mr. Chambers: I object to that.

The Master: Why?

Mr. Chambers: The order of the commission is the best evidence.

The Master: The question simply is do they prescribe it by order each year?

Mr. Chambers: Well, the order is the best evidence.

The Master: Well, do you admit it is prescribed by order?

5303 Mr. Chambers: No, I do not know anything about it.

The Master: Well, let us find out whether it is.

The Witness: The order does require us to file a report, and set forth the date on which we are to file it.

Q. And does it also prescribe a printed form of report?

A. Yes, sir, there is a printed form of annual report.

Mr. O'Brien: Furnished by the Commission?

5304 The Witness: Furnished by the commission.

Q. Have you here with you in court the order prescribing the time of filing the annual report for 1918, and the form?

A. Yes.

Q. Will you produce it?

A. Yes (handing paper).

Mr. O'Brien: May it be recorded that we are objecting to these questions on the ground they are irrelevant?

The Master: Yes, and the objection overruled. Col. Hayward has brought out these questions, and I think the complainant ought to be permitted to offer such proof as it has. 5305

Q. Is this copy you have a certified copy of the order which you received from the commission by its secretary?

A. It is.

Q. The copy which was served upon the company?

A. It was.

Mr. Ransom: I offer the order in evidence, being the order made by the Public Service Commission for the First District on the 23rd day of January, 1919, entitled "In case No. 2354", order approving and prescribing the form of annual report. 5306

The Master: Any objection?

Mr. Chambers: Yes, I will object to it as incompetent, irrelevant and immaterial, no foundation laid for it.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I join in that objection, of course, your Honor.

The Master: The same ruling as against the other defendants, and the same exception. 5307

The order was then received in evidence and marked Complainant's Exhibit No. 203.

Q. This order prescribes what date for the filing of the 1918 annual report?

A. This order prescribes that the report must be filed on or before March 15, 1919.

5308 Q. Now, in other years were similar orders made prescribing the dates?

A. There were, in each year.

Q. Now, have you at the request of counsel for complainant, following what Colonel Hayward said the other day, verified from your records, the filing dates prescribed by the Commission in the different years, and the dates on which you filed the annual report with the Commission?

A. I have, back to the establishment of the uniform system of accounts.

Q. Will you state those dates by years?

A. The year 1909——

5309 Mr. O'Brien: Unless it is going to bring a personal satisfaction to counsel for the complainant, I don't see what need there is of bringing in this matter.

Mr. Ransom: It is not a personal satisfaction. He is answering a question raised by Colonel Hayward.

The Master: Colonel Hayward raised the question as to the date.

Mr. O'Brien: Well, they are usually late, the gas companies are, with their reports.

The Master: He says they are not late.

5310 Mr. Ransom: They were not late.

Mr. O'Brien: Well, I mean to say it would be a pardonable sin.

The Master: Let's have it, that is the quickest way; objection overruled.

The Witness: The first year after the establishment of the accounting system, the year 1909, the report was required to be filed on April 30, 1910. We filed it on May 16, 1910.

The Master: You were late that year with 5311
this?

The Witness: Yes; we asked for an extension and received permission of the Commission to delay filing of the report. The year 1910 required to be filed on February 28, 1911, and filed on that date. 1911 required to be filed February 28, 1912, and filed on that date. 1912 required to be filed on February 28th, and filed on that date.

Mr. O'Brien: Just a minute. Will you, as you go along, state whether you amended it afterwards in any of those years? 5312

The Witness: I did not get your question.

Mr. O'Brien: Whether you made any amendment or adjustment to it afterwards in any of those years.

The Witness: Following the filing of the report, the Commission have periodically asked us for additional information, in which case we have furnished it to them at a later date.

The Master: Go on.

The Witness: 1913 required to be filed February 28, 1914, and filed that date. 1914 required to be filed February 28, 1915, and filed on February 27, 1915. 1915 required to 5313
be filed March 31, 1916, and filed on that date. 1916 required to be filed April 16, 1917, and filed on that date. 1917 required to be filed March 30, 1918, and filed on that date. 1918 required to be filed March 15, 1919, and filed on that date.

By Mr. Hayward:

Q. Now, when you state "filed on that date", you mean you took something up there, which you

5314 claimed was your report, and you claimed complied with the order of the Commission?

A. Yes, sir.

Q. And the Commission did not think so, and required additional information and additional items and additional facts to be recorded, which they claimed were required in the original filing, that is true, isn't it?

A. Yes, which they thought they needed.

Q. Yes, and which they claimed had been required in the original document?

A. I would not always say that.

Q. The report you made you claimed had com-
5315 plied with the order and would have been in the original document?

A. No, I would not say that.

Q. And it was over the subsequent items that you had left out that these long protracted discussions took place as to whether you would do it or not, wasn't it?

A. Nine-tenths of the correspondence of the Commission on the filing of the report is had about some minor clerical errors: Is there a brick tank or steel tank; last year you reported a certain wall six feet high, this year you report it six or eight
5316 feet.

Mr. Ransom: In view of the questions asked by Col. Hayward, I will offer in evidence the Annual Report of 1918.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

Mr. Ransom: It is perfectly proper, he has clearly opened the way.

Mr. Chambers: I object to it.

Mr. Ransom: Here it is on the printed form, 5317
with the entries all there.

The Master: The original report.

Mr. Ransom: The complainant's copy of the report. Of course, the law requires one copy to be filed and one copy to be retained by the complainant.

Mr. O'Brien: Is that the foundation you have been laying?

Mr. Ransom: I offer the report in evidence.

Mr. O'Brien: Your Honor, it is palpable why he has been using up our time here on this unnecessary and immaterial matter, and I ob- 5318
ject to it.

Mr. Chambers: I object to it.

The Master: Judge Ransom, I won't allow it on the theory they have opened the door. If you will withhold it and have it in mind, and you think you want it in at some later date, you can offer it then, and I am inclined to think I may receive it on the theory that it is a report required by law. I won't consider it at this time, because I am considering a matter which is a good deal more important

Mr. Ransom: I except to your Honor's 5319
ruling.

May I ask the witness a question:

Q. Subsequent to the filing of the Annual Report with the Commission March 15, 1919, the report for the year 1918, did you subsequently and on any date receive any request from the Commission for further information?

A. I did.

Mr. O'Brien: Why, your Honor, I am not concerned with these questions here, what the

5320 Public Service Commission did while Mr. Ransom was counsel for them.

Mr. Ransom: This was not while I was counsel for them.

Mr. O'Brien: Well, you have asked him four or five questions about 1917, 1916 and 1915.

Mr. Ransom: I have not asked him any such questions.

Mr. Chambers: I object to it on the ground that there is another question.

The Master: One at a time, please.

Mr. O'Brien: I ask that this be kept out of this case.

5321 The Master: It won't be kept out of the case because each side is trying to put it in.

Mr. O'Brien: I am not trying to put it in. I have condemned their action many times myself.

Mr. Ransom: May I just say a word? I have a right to say this.

Mr. O'Brien: The uniform system of accounts cuts no figure with the defendants.

The Master: Judge Ransom has the floor, and you will please take a seat, Mr. O'Brien.

Mr. Ransom: I am compelled to make a 5322 statement because the counsel for the District Attorney knows perfectly well the utter falsity of the insinuations which he has repeatedly brought here and that he has tried to inject into this record from time to time regarding my connection with the commission prior to December 31, of 1918. He knows that I have not been in any way connected with the Commission since that time, and he knows that

these questions do not in any way relate to 5323
anything that took place during my brief period of incumbency with the Commission. Council for the District Attorney also knows or should know that never in any court have I ever appeared until now in any case in which the Consolidated Gas Company was a party. I never took part before the Commission in any proceedings which involved the rates or the capitalization of this company. The accusation which has been made throughout this trial, the insinuations by Mr. O'Brien, is as false as it is improper, and it is a part of a deliberate 5324
effort on the part of counsel for the District Attorney to withhold from this complainant a fair trial, and to create an atmosphere of prejudice, and I object to it and I ask to have my objection noted on the record now. I have not asked this witness with respect to anything which I had anything to do as counsel for the Commission.

The Master: Now, Judge Ransom——

Mr. O'Brien: Your Honor, that calls for a statement from me.

The Master: No, I will not permit any 5325
further statements on that subject. I won't have it.

Mr. O'Brien: I am going to insist on it, your Honor. He said that I made a false statement.

The Master: Now, Mr. O'Brien, I won't have it.

Mr. O'Brien: I am going to show the impropriety of this being in this case.

5326 The Master: Now, that will have to stop, Mr. O'Brien. You gentlemen are either going to conduct this trial properly, or we will have somebody who will. Now getting back to the offer of the annual report, I told you I would not rule on it at this time and you took an exception. I now give you notice that I shall require you to offer that later on.

Mr. Ransom: I shall offer it. Now, I have asked an unanswered question, on which I would like a ruling: Whether at some time subsequent to the filing there was received from
5327 the Public Service Commission a request for further information.

The Master: I will rule it out as immaterial.

Mr. Ransom: Exception.

Q. And did you subsequent to the receipt of any request from the commission send in later to the commission additional or further information?

The Master: I rule that out, too.

Mr. Ransom: Exception.

Q. Now, Mr. Brundage, Col. Hayward directed your attention this morning to item No. 231, trunk lines and mains as entitled in the Complainant's Exhibit 15. Will you state under what title
5328 item 231 is required by the commission to be reported in its form of annual report, page 47?

A. In the Public Service Commission report on page 47, we are required to give statistics of what is called here "Street mains and pipe lines".

Q. And that is identified by No. 231 with the item 231 in the uniform system of accounts, Complainant's Exhibit 15?

A. Yes.

Q. And under what heading is the company ac- 5329
count?

A. Carried in the company's account as "Street Mains".

Q. Your attention was called by Colonel Hayward to the addition 1 title or sub-title, "Assessments". Does the form of annual reports to the Commission as prescribed for 1918, provide for or permit such a title or sub-title?

A. It does not.

Q. In what form is that there shown?

A. We include it here under the title, "Land devoted to gas operations". 5330

Q. Is the account "Fixed Capital as of December 31, 1908", an account provided for by the uniform system of accounts?

A. It is.

Q. And that account was to be kept in the way in which it had been kept up to that time on the company's books?

Mr. Chambers: To that I object.

Mr. O'Brien: Same objection.

The Master: Objection sustained.

Q. Will you explain just what is meant by "Suspense Account", to which reference has been made?

Mr. Chambers: I object to that, because we 5331
have another question here before the Court, which we ought to dispose of.

The Master: I will sustain that.

Mr. Ransom: Very well, I will withdraw it at this time.

The Master: Mr. O'Brien, you were going to explain to the Court how we can avoid bringing

5332 all the records and vouchers and statements without taking these books in evidence.

Mr. O'Brien: Your Honor must have misunderstood me. I want to summarize some of the facts before the Court on my objections to the books going in evidence.

The Master: I thought you had in mind——

Mr. O'Brien: Incidentally to that I wanted to show the Court that the method of conforming to what we believe to be the rule of evidence will not produce the colossal, interminable task, such as pictured by counsel for the complainant.

5333 The Master: That is what I want to get at. I want to see if there is any way of getting any better proof within reasonable limits of time than these books.

Mr. O'Brien: With regard to the admission of this testimony, and along the lines indicated by your Honor this morning, there is nothing further from the minds of the defendants than the desire to encumber the record or to incur an expense that might be avoided by going into matters that are not germane to the case. All that the defendants want here is the truth, and

5334 if the truth brought out on the trial, in an open, frank disclosure, and in the conduct of the trial with perfect freedom and with a candor that is becoming to the complainant, if that shows a result that means a higher price for gas, the defendants, of course, will stand by it. There is no desire here to do anything except to fulfil a public duty, and incidentally to feel that we have conducted ourselves worthily in a matter of this very great importance.

Now, I say to you at the outset, as I will at

the close of my brief remarks, that this will 5335
be, perhaps, in the line of rate cases the most important ever tried in this country. The pending Peoples Gas Company case of Chicago will not be even commensurate with it in its importance. It is important by reason of the fact that the old case was a landmark in jurisprudence involving rate matters, and important also because of the present condition of things in this country and in this city. We have a large duty to perform outside of the special task before us as counsel, and I want to impress this fact upon the Master, as well as upon everybody 5336
concerned in this trial, lest they may, during the heat of controversy, feel that bias or partisanship or unfairness is carrying us outside of the line of our duty in this matter.

If I, as counsel for the complainant company here, was presenting this case, having before me the protection of their interests, having before me the desire to be fair and honest and square with the requirements in rate cases, I certainly would not at the very outset of this case, bring in these general books of record which, in some cases, not in 5337
all, but in some instances, and in important accounts, may be the tenth or eleventh entry of a transaction. I would not bring them in here and ask that they be accepted. There are other things to be brought before the court, the fact that they are making gas, and how they make it; the fact that in making it they need certain things; the fact that the plant must be kept in repair and maintained; the fact that labor must be paid, and possibly

5338 the wages of laborers increased from time to time; the fact that they have certain methods of keeping books, and the detail of those methods, all of this should have been shown as a foundation for the offer.

Not only that, your Honor, but there is not here, as I said before such a tremendous thing that would take the time until the snow flies. We have been told by the witness—I think it was at page 1462,—that they have about five men working on the books. You can take that treasurer's book, and there is perhaps one handwriting all the way through the year, may be
5339 two. You can take the operating ledger, and the handwriting did not change so much. Those men, most of them still with the company, your Honor. You can take the works offices. That does not mean a long line of employees to be dragged into court here and to be questioned minutely and to a limitless degree about the method in which they kept papers. There is a man or two in every works who can cover that matter in his testimony, and by bringing in the original data and offering it in evidence you can then by certain
5340 examinations of witnesses bring out the reliability or unreliability of the fundamental records upon which this structure has been built.

Now, that is what the rule of law requires, your Honor, and that is what ought to be done in this case.

The Master: May I interrupt you, Mr. O'Brien? Take in any one instance the inability to get a particular man to prove up a particular set of records, being part of a com-

plete set; are you going to destroy the proof as to all of it? 5341

Mr. O'Brien: That would present another situation, your Honor.

The Master: I think it would bear very heavily upon it.

Mr. Chambers: Because he is dead or out of the State?

The Master: Yes.

Mr. Chambers: Then they showed that fact, as Judge Nichols ruled. If there is one man in the chain who is missing or in the service in the army in Europe, proof of that fact would not destroy the chain of evidence. But they 5342 would have to prove that they could not get him by subpœna.

Mr. O'Brien: Let me start with the simple things and lead up. Take the works at 99th Street, where they make some gas. If you were to visit that plant it would become a very simple proposition as to what they are spending money on. The three great factors are coal, gas oil and labor.

There are three or four machines there, two of them running we will say, and the coal is brought in from the barge. The old gentle- 5343 man weighs it and notes the weight of the dump cart, and it proceeds across a trestle, over into the generator house. There is a record kept of the loads he brings in, the man operating the gas machines, barrier or some of his colleagues there will run the machine from one day to another and note the amount of oil used. He transcribes the record from the gas oil meter. Someone else is charged with the duty from time to time, I assume, of going

5344 out into the tanks and measuring it in another way with a yardstick.

So they keep tabs from day to day of the amount of gas oil used, and they ought to be able to say at the end of the year how much gas oil has been used in that works. The amount of work done in the machine shop or in the yard, in the meter house and so on, is brought in, and it is a very simple record. There is one clerk in the works' office who is keeping tabs on that, and he transcribes some of these records into a manufacturing book, and that, as I said before, is the quintescence
5345 of information from the doings at the works, the operating results and the detail of the operating works.

We have not had them offered in evidence. One manufacturing book is built up out of these records, and usually it covers a time of three or four or five years. So the one book brought in, with the clerk of the works, would bring in these records; they would be identified by him; in some instances to show the system or present certain tests of the records, to show the reliability of the records, the original records, that could be done.

5346 The only other case in which they are making gas in the city—that is the complainant company directly—is at 21st Street, and that could be done the same way there. What I am driving at, your Honor, is that so far as the method of proof is concerned and the time to be taken in presenting the proof is concerned, it does not make any difference whether the company is as big as the Consolidated or strong as the struggling little weakling in the cor-

poration line, the Bronx Gas & Electric in the 5347
Eastern section of The Bronx. The method is the same.

In other words, the amount of gas, when you get beyond a certain quantity of business, does not mean a proportionate amount of work in bringing the witnesses in. We are met with this here, and I want to say I hope when we get through this case, after I have made my little humble personal effort to defend the client I am appearing for and Mr. Hayward and Mr. Chambers have done their part, and the Company has done theirs, and your Honor's inexhaustible patience shall end in your de- 5348
cision, we will have a record that will be complete and the facts will be there, and we will stand upon the conclusion drawn from those facts.

The Master: What was it you told me Judge Greenbaum did?

Mr. O'Brien: When this matter came up before Judge Greenbaum we went all over this law and it was well argued. He said they would have, of course, before presenting books, to produce the original records. They said, "Your Honor, it will take van loads of things 5349
to prove the case if that is going to be insisted upon." Well, it was insisted upon and they said there is countless work, tickets, pink tickets and green slips, and so on, for the different kinds of work done, and they said if they were asked to do that this courtroom would not hold the stuff. I went personally on a little visit out there to the plant, to see how the investigators were getting on, and I asked for certain kinds of records which covered this form of evidence,

5350 which they said would take van loads, and they were all done up in 12 little packages, your Honor.

The Master: What I want to know is this: Were books similar to these offered in the Breenbaum case?

Mr. O'Brien: They were.

The Master: They brought up that question?

Mr. O'Brien: They were. The first book that brought it up, your Honor, was the manufacturing book. That is, is shows the quantity of oil and coal used and the labor.

The Master: That is like this manufacturing
5351 book A, was it?

Mr. O'Brien: No, it was not. It was a book kept at the works which showed the daily make, the corrected make, the amount of gas oil used, the various kinds of coal used, the amount of water used, then the labor and the number of men employed.

The Master: Then I understand that. That was offered in evidence without the production of all of these supporting data?

Mr. O'Brien: Yes.

The Master: What did Judge Greenbaum do with that offer?

5352 Mr. O'Brien: Why, on objection being made, he declined to receive the book and he said they would have to produce the underlying data.

The Master: That was the book kept at the works?

Mr. O'Brien: The book kept at the works.

The Master: And although that was the only book kept at the works which would contain all the information at the works, he would not let it in?

Mr. O'Brien: Yes. 5353

The Master: Then what happened?

Mr. O'Brien: Here is what happened. They had a clerk who had been with the company or in its employ for a number of years. There was a witness called to explain and identify the book. Objection was made to it and counsel said he was only explaining the book just to show the method, and the Judge of course put in the record a provision that the questions were not to carry with them the idea that the book was going in. Well, objection being made, the company produced the records that were made, gas makers' reports, 5354
daily reports and weekly reports. The gas makers' reports were produced and they show statistical data from day to day, each run, as it is called, on the machine, the amount of oil used, and the amount of coal used.

The Master: That was part of the information that was in this book?

Mr. O'Brien: Yes, copied into the book.

The Master: Yes.

Mr. O'Brien: Of course, the works clerk does some computation.

The Master: Then Judge Greenbaum made them bring a witness to testify to the accuracy 5355
of some of these sheets?

Mr. O'Brien: The accuracy of the sheets, and then his computation. There was a matter in which he made certain computations. It was found, for instance, that when he noted the amount of coal of a certain kind that was used, on analysis he worked in each day in his computation a certain coefficient of so many pounds of coal per thousand feet

5356 of gas made. That coefficient was brought into the accounting or the computation to cover possible wastage and leakage, and they tried to justify it by saying that it was made to cover the variations between the pile and the survey at the end of the year, and the computations made from the bills showing the delivery of coal.

However, these little records were presented and the witness cross-examined upon them. The computations were shown. These little things were brought out: The method of transcribing the amount of gas oil used and
5357 the record of keeping the measurements of the tank. They all came into it, and they had the result in that particular case, your Honor, of Judge Greenbaum positively excluding that book from evidence except as to the oil used. He was satisfied as to the way in which the oil account was kept, but he said that the testimony showed it was absolutely unreliable as to the other features, and it was eliminated from the case.

After the accountancy end of the case, that came up in this way: Witnesses were called, with the ledger and the journal, and they
5358 turned, as did our witness here when I undertook to cross-examine him, to the first account in the book, and it happened to be a stock account of coal. It not only disclosed that, but they were adding to the invoice account the cost of labor and so on, and striking an average book cost for coal.

As we went along in that three or four days trying to find out the way the books were kept before they were offered, the result of it was

that the Court insisted that he would have to 5359
prove it, and the result of it was that the Court insisted that he would have proof of the expenses of the company from original sources. He said, "You know how much you paid for coal, how much you paid for oil and how much you paid for labor", and they were compelled to bring in and put in evidence their vouchers, showing the amount of coal and oil purchased and the payrolls were brought in and the time tickets where they had them were offered in evidence, and then certain months or weeks were taken in order to test the accuracy of the record, by 5360
cross-examining the man who was present and who made the record, or who was present at the time it was made.

The Master: What was the result after that test? Then the books went in?

Mr. O'Brien: No, the account books or books of account were never put in evidence, except as to certain features they were offered in evidence near the close of the case. In other words, the Court said, 'You can go directly to the sources of information, the vouchers themselves," and from those vouchers showing the payment of money were made up schedules, the 5361
vouchers were listed, and then there were certain allocations made to various columns for the certain kinds of expense. They were made up from the original sources of information, and they were received after a minute cross-examination preliminary to the objections that were made to their being received.

In this case, your Honor, there is more than a special reason for the objection; for here we

5362 have not even the books that were made contemporaneously with the transactions; we have not here the books of the branch offices out of which reports are made to the central offices.

The Master: Those books at the branch office and at the works are not made contemporaneously with the transaction. They are taken from others.

Mr. O'Brien: I suppose they record them the day after. They make a record in the clerk's office at the works.

The Master: I do not think that the works' 5363 books which contain entries taken from other sheets and records and vouchers are any better than these books.

Mr. Chambers: We have the right to cross-examine the man who made them.

Mr. O'Brien: What I want to say, your Honor, is that these are more objectionable. They are more objectionable because they have gone through many cases, they have gone through further computation, they have been copied and then analyzed as in the journal and divided up and then to their final resting place, the ledger of the company.

Mr. Chambers: Right there I want to say 5364 that the fundamental error in the offer is this: We will be deprived of the right of cross-examination of these men who made the entries in those books at the works.

The Master: Let Mr. O'Brien get through.

Mr. Chambers: I want to speak at length later.

The Master: I will let you speak until five o'clock after Mr. O'Brien gets through.

Mr. O'Brien: I have been through a good 5365
part of the journal, your Honor.

The Master: You know what I think of the journal, don't you? I have already expressed myself about journals.

Mr. O'Brien: Only the more you look at it the more you are stunned.

The Master: I am never stunned by a journal.

Mr. O'Brien: It is like the log book of the bark "Mary Ann" that they used to talk about in a musical comedy some years ago—that not to reduce a serious subject to humor, however. But it is not a book of account after all. While 5366
it does embody the figures, the distributions and adjustments here are matters that must be proven in some other way.

The Master: If I allow the journal in I would only let them in as part of the bookkeeping system for what they are worth, with the mental reservation in my own mind that they are not worth much.

Mr. O'Brien: If the journals go in they are only one part of the Siamese Twins and the other books would have to go in, because the information refers to the ledger and the ledger 5367
to the journal.

The Master: Yes, I say I am inclined to let them all in or keep them all out.

Mr. O'Brien: So as to the data, and this is a very important part of the case, as to the other companies. I do not need to dwell upon it so much here in argument, because it was brought out so clearly in the testimony. But the treasurer's books and the other books indicate relations with the Edison Company, rela-

5368 tions with the electric light and power company, relations with the New York & Queens Company, and relations with the other companies named in the testimony today. That all involves reports of some kind, and the reliability of which and the accuracy of which is in this case and must be established. And yet, your Honor, they have not been referred to except when we came to cross-examination. This whole complex intercorporate relationship——

The Master: Let me interrupt you again, Mr. O'Brien; I said this morning one of the
5369 things that bothered me was that you gentlemen representing the defense with reference to items having to do with other corporations would not have the opportunity of examining those vouchers. Suppose I admitted these books in evidence and said with respect to them that unless those items which required supporting records or vouchers of other companies were in evidence, supported by having those produced and offered in evidence, that I should strike them out. Wouldn't that protect you? I would get them here.

Mr. O'Brien: Only to a small degree, your
5370 Honor.

The Master: But it would as to all those items depending on their corporate records, wouldn't it? I do not know whether I have made myself clear.

Mr. O'Brien: They in turn, your Honor, are built, like these are, on underlying original records.

The Master: My mind runs this way so far as these books claim to be regular books of

account and claim to be books of original entry, 5371
which I have not yet reached conclusion on, and assuming that I do reach a conclusion that they are the kind of books that are now termed in matters of this kind books of original entry or matters of original entry, are supported by other vouchers in the possession of the company to which you must have access and they have power to produce, I might admit the books. As I said this morning my difficulty arose in that connection with items having to do with records of other companies, that they cannot be held responsible for the production of—— 5372

Mr. Ransom: May I say a word there?

The Master: Wait until I get through. What I had in mind was this: For instance, the apportionment of the engineering and superintendence expense, it depends upon the amount of construction work done by this company and three other companies during the year 1918. I was wondering whether I could not leave these books in and announce that I would entertain a motion to strike out any item of that character unless they were supported by the production in court of records of other companies. 5373

Mr. Ransom: May I just say a word on that? May I just clear that up while we are at it?

The Master: Yes.

Mr. Ransom: I have taken that matter up during the noon recess and I am authorized to say that all of these defendants may have full access to the vouchers and the books of these other companies for the purpose of checking up

5374 any of these items of the sort that your Honor has referred to.

The Master: Well, that is simply a repetition of what you said this morning.

Mr. Ransom: No, it is more than that. I mean it has been taken up with the proper officers of those companies.

The Master: They may change their minds.

Mr. Ransom: But if there has meanwhile been an examination of those things—of course the Commission has and continuously exercises its power over all those things.

The Master: Mr. O'Brien is not represented
5375 there.

Mr. O'Brien: I am so tired of that song. It does not bind me, what the Commission has done.

The Master: Just let Judge Ransom finish this statement and I won't let him interrupt you again.

Mr. Ransom: Those books and all data needed to check up are available to these defendants. They may have those at any time upon request, any of the data, and the books of those other companies will be produced here, if you so direct and rule.

5376 The Master: Go ahead, Mr. O'Brien.

Mr. O'Brien: Right on that point, your Honor, I want to say this: We are not here charged with the responsibility of proving their case. The burden is on them, and the defendants refuse and decline to take the burden of proving the case before them. The mere offer of access, even if it were as sweeping and complete as we say it ought to be—access to the records as they stand in the offices—that

would not relieve them of the obligation of con- 5377
forming to the rules of evidence in this case.

Mr. O'Brien: Now, let me proceed further to show your Honor just the error we are falling into if these books are allowed in. The accuracy of these books has not been proven, the accuracy of these books cannot be accepted on the statement of a witness that they had a system; and the accuracy, even on a cursory examination, has shown to be very much in doubt. Turn to the restaurant account—I am talking now from a very hasty and cursory examination that I made—and I don't know very much about accounting—they have a long 5378
account there covering the restaurant and kitchen supplies that are bought. A great many of the checks in the Treasurer's office are for that and for similar extraneous matters which do not relate to the gas-making business.

The Master: Mr. O'Brien, let me interrupt. I think I have reached a conclusion which I will express, without saying that it is definite.

Mr. O'Brien: Well, I have a number of little objections that I will have to place on the record before you——

The Master: I am not deciding it. The thought occurs to me, and I want to see how 5379
this will work. Judge Ransom, I do not believe it is going to be such tremendous and difficult job for you to produce in Court the books, vouchers and records upon which these accounts depend, and have them identified by Mr. Brundage as the regular reports, documents and vouchers.

Mr. Ransom: You mean all the vouchers?

The Master: I mean all the vouchers, without calling witnesses for this purpose.

5380 Mr. Ransom: Let us see what that will mean.

The Master: For this purpose, to have them marked in evidence in bundles.

Mr. Ransom: Do you realize what that means? You could not physically mark them in six months.

The Master: Why, aren't they in bundles?

Mr. Ransom: Well, but look at the quantity of them. For example, just one little phase of it, in one single year there were one hundred thousand vouchers——

The Master: I know, but I would make a
5381 bundle.

Mr. O'Brien: They don't have to be marked singly.

Mr. Chambers: I tried a case where I offered 55,000 checks, and proved the handwriting on every check, and completed the trial in three weeks.

The Master: I take that in the office of the Gas Company there will be found a bundle of vouchers marked "March, 1918".

Mr. Ransom: A bundle of vouchers—do you realize that if you could get the use of the Court rooms in the Federal Building, you could
5382 not comply with your Honor's suggestion physically. We would have to get the services of the Army Transport Corps to bring them down here.

The Master: Why?

Mr. Ransom: Because you, apparently, have no comprehension of the magnitude of what is involved in such a suggestion. The very idea of this thing——

The Master: Mr. Brundage, will you take 5383
the stand a minute?

Mr. Ransom: If you will go up and look——

Mr. O'Brien: When you examine the witness will you have this before you? Here are the payments of money of this company for four months, January to April inclusive.

The Master: That is only one section of it.

Mr. O'Brien: This is the money spent.

The Master: I know, but this is only one thing. Mr. Brundage, will you take the stand a minute?

HENRY M. BRUNDAGE resumed the stand.

The Master: You have told us in your pre- 5384
vious testimony as to the method of keeping records and accounts of the various works and branch stations and at the general office?

The Witness: I have, your Honor.

The Master: You have described to us the books that are kept at the various works?

The Witness: Yes, sir.

The Master: Have you any idea how many books are kept at any one works for the last —1906 do you want to go to?

Mr. Ransom: Certainly you don't mean the books that Judge Greenbaum excluded?

The Master: I don't know just yet whether 5385
I mean those or something more. I want to find out.

Mr. Ransom: We will have to go back a number of years.

The Master: How many years; ten years?

Mr. Ransom: We will have to go back in some respects that many years.

Mr. O'Brien: Well, we have 1918 before us now.

5386 The Master: I have got to have in mind more than 1918.

Mr. O'Brien: The manufacturing books in a gas company usually covers a period of years.

The Master: Are you testifying, or is this witness going to testify?

Mr. O'Brien: I am answering counsel's statement.

The Master: I was trying to find out something from this witness.

Mr. Ransom: Are you referring to books as distinguished from vouchers?

5387 The Master: I asked about books.

Mr. Ransom: You mean these statistical records that are kept at different works?

The Master: Yes.

Mr. Ransom: That is one thing; the branch records are another.

The Master: Let me find out in my own way just what I want to get at.

By the Master:

Q. Take these records for 1918, Mr. Brundage, these entries in these books come from the various reports that come into your office that you have already described?

5388 A. They do.

Q. And they likewise come in from vouchers, bills that are presented and paid?

A. Sundry creditors' bills, yes, sir.

Q. Now, limiting myself entirely to the pay rolls and other reports which come to you from other departments, if you know what I mean, and the receipted vouchers or the bills for merchandise de-

livered, how many bundles would you say there 5389
would be? Are they packed away in bundles?

A. No, your Honor; I cannot answer that question. I can tell you the general facts.

Q. How do you file away your vouchers?

A. We file our sundry creditors' vouchers numerically, in numerical sequence. During the year 1918 I have testified that we passed through our accounts 18,000 sundry creditors' vouchers.

Q. Would they make more than one large bundle? They could be made into one large bundle?

A. Oh, no. 5390

Q. How many bundles?

A. Thousands of them. We file them in numerical order, as many in a compartment or drawer as can be put in. 18,000 vouchers is a tremendous file. I discussed in the record the matter of the pay rolls which are supported by these individual workmen's weekly cards, and there are well over 100,000 of those.

Q. In a year?

A. In a year, yes.

Q. Do you mean to tell me that I could not pack up these sundry creditors' vouchers into bundles of say 1,000 to a bundle, or 5,000 in a bundle of 5391
reasonable size for transportation?

A. Do I mean to tell you that you cannot?

Q. Yes.

A. Why, it is physically possible to do most anything of that sort if you have room to handle them and facilities for carrying them.

Q. What I am getting at is this, Mr. Brundage, we could have men take the first thousand sundry

creditor vouchers for 1918 and make a bundle, couldn't we?

A. Yes.

Q. How big a bundle would that make, in your judgment?

A. Oh——

Q. From two to three feet square?

A. Two or three feet square, possibly.

Q. Well, that would not be so bulky, would it?

A. Well, of course, it is only fair to say, your Honor, that these very vouchers have been already submitted to these examiners, and they have had them for months.

Q. That is not the point I am on now. I am trying to do two things, I am trying to save time, but not at the expense of the interests of anybody?

A. Yes, sir.

Q. Now, you will agree with me that I could make a bundle of a thousand sundry creditors' vouchers, which would not be too big for handling?

A. They could be handled with a truck or a series of trucks.

Q. That would make 18 bundles for the year 1918, wouldn't it?

A. If they were done up in bundles of a thousand each, yes.

Q. You could identify them, if you supervised their being bundled up, that this contained the vouchers from one to a thousand, couldn't you?

A. They are numbered in sequence.

Q. They could easily be identified as being the vouchers for which these entries were made, couldn't they, by you, and I would not need a lot of witnesses for that, would I?

A. You could identify them against the postings 5395
in the operating ledger.

Q. What I mean is, if Judge Ransom brought a bundle here and offered a bundle containing sundry creditor vouchers from one to a thousand, you could identify that as being the sundry vouchers from your files without witnesses?

A. Yes.

Q. You would not need a lot of witnesses for that?

A. No.

Mr. Ransom: You would need the argument that has just been made?

5396

The Master: No, I am trying to find a little ground as a result of all this argument.

Mr. Ransom: And this is only one small item you are referring to that will make 18 bundles?

The Master: I am going to see how big the accumulation of the items amounts to. I have 18 bundles there, and I can probably put more than a thousand in a bundle.

Q. Then we have got 100,000 pay roll vouchers?

A. At least that, your Honor.

Q. How large are those pay roll sheets?

A. They are cards, approximately——

Q. Six by eight? 5397

A. Oh, six by eight.

Q. And how thick are the cards, that is, are they cardboard or thin paper?

A. They are not thin, they have enough stability to be filed readily.

Q. Well, of course, those bundles would probably be larger in size, a thousand to a bundle, than the others, wouldn't they?

5398 A. Yes.

Q. And it would take another 100 bundles, in addition to which we have all these other reports mentioned?

A. You have. All in turn leading back to the data in the various departments. I have testified, your Honor, as to all these reports that come in on which we make entries.

Q. So that for one year we might have two or three hundred bundles, separate bundles?

A. At least that.

Mr. Ransom: May I just say a word on that
5399 subject?

The Master: Do you want to ask the witness anything?

Mr. O'Brien: I have not finished, your Honor.

Mr. Chambers: You have just touched on pay rolls and sundries.

The Master: Yes, I have just scratched the surface a little.

Mr. Chambers: Well, what else is there?

Q. Well, you have all of these other reports that he testified to in the various departments?

Mr. Ransom: Well, let us find out here about
5400 it, what else is there?

By Mr. Chambers:

Q. There is 118 bundles so far, Mr. Brundage. What else is there?

A. By your computation.

The Master: Or by mine, and I am talking roughly.

Q. Now, what comes next besides the pay rolls that are supported by vouchers?

A. Then there are the petty cash vouchers. 5401

Q. Petty cash vouchers. Now, just a minute. How many vouchers of yours for 1918?

A. I have not counted them, counselor.

Q. Well, are they 18,000?

Mr. O'Brien: One voucher would cover, I suppose, a great many petty cash transactions.

The Witness: Approximately there is——

Mr. O'Brien: Do you run them by the week or month?

The Master: One at a time.

Q. By petty cash, you mean the $100, or whatever is allotted to a superintendent of these two plants? 5402

A. Yes, sir.

Q. There are not so many of those?

A. Oh, yes there are.

Q. 18,000?

A. No, not that many.

Q. 5,000?

A. Better.

Q. Well, so there is 5,000 of those. Those could be done up in five bundles or less, of a thousand each, couldn't they?

A. Well, that would be a tremendous bundle, because attached to these vouchers there is a whole host of petty slips. 5403

The Master: Mr. Chambers, after I have done all that, after I have ordered them produced down here and marked as an exhibit, hundreds of bundles for one year; then I send them all back, don't I?

Mr. Chambers: No.

The Master: What will I do with them?

5404 Mr. Chambers: Then you produce the superintendent.

The Master: No, I won't call the superintendent. That is just where I will draw the line.

Mr. Chambers: Yes. No court in this land has ever held that you can deprive us of the cross-examination of the man who spent that money.

The Master: Yes, they have.

Mr. Chambers: Well, I would like to see the case. I want to speak to that. Judge
5405 Nichols had the whole thing up, and he compelled them to produce these vouchers and produce them in Court.

The Master: Do you want to ask Mr. Brundage any more questions?

Mr. Chambers: I would like to find out what else there is.

The Witness: There was the additional matter of all the monthly reports that I have already testified to.

Q. Monthly reports, how many in number?

A. From every branch of the company, from every department of the company.

5406 The Master: That is specified in the record, five from one and seven from another.

The Witness: I put it in the record. I haven't the record now.

Mr. O'Brien: You have five branches, and they make monthly reports, that is five times twelve is sixty.

The Witness: There is three street departments and five shops, and all those have records.

By Mr. Chambers: 5407

Q. What else is there besides monthly reports?

A. Those are in turn supported by data from each department, running into thousands of papers.

Q. What else besides the monthly reports?

The Master: I have got it right here.

Mr. Chambers: Well, I have passed to another.

The Master: Wait a minute. On page 1429 he says they have accounts receivable five.

Mr. Chambers: Five accounts receivable.

The Master: Yes; report of blank material was five, that is ten; cash report, six; that is 5408 sixteen; cash sales six is twenty-two; sundry customers six is twenty-eight; deposits transfers five is thirty-three; installment appliances five is thirty-eight; rented appliances five is forty-three; rented lamps five is forty-eight; I am not going to read down all through these. They read stations 5 and 13 and 9 and 3 and 3 and 3 and 1.

Mr. Ransom: Fifty some.

The Witness: Then there is another long item, your Honor, the question of interdepartmental vouchers which run into the thousands.

Q. Departmental vouchers? 5409

A. Interdepartmental voucher; material transferred from one department to another.

Mr. Ransom: Are there abaut 6,000,000 bill stubs in a year?

The Master: What do you mean by "bill stubs"?

The Witness: Coupons. Yes.

The Master: Charges for gas sold?

5410 Mr. O'Brien: That whole subject can be gone over in a very short time, your Honor. The matter of the consumers ledgers and the way in which it is kept.

Q. Cash coupons, we have the monthly reports, cash coupons?

A. Yes.

Q. How many of those?

A. Oh, millions of them.

Mr. Ransom: You mean for a single year?

The Witness: Yes, in round figures we have 500,000 consumers, and a cash coupon for each consumer a month, and some of them run
5411 weekly accounts.

Q Those are vouchers to these books, are they?

A. They lead to the reports and the reports lead to these books, as I have already testified.

Q. You have already given me the reports, I scratched that; you have copied the reports?

Mr. O'Brien: This is a little coupon attached to the consumer's bill.

Mr. Chambers: Yes, I know it.

Q. What else?

A. I think we have covered labor and sundry creditors' vouchers, petty expense, interdepartmen-
5412 tal vouchers and reports. I should say that was all.

The Master: And cash coupons?

The Witness: Oh, yes, cash coupons.

Q. Interdepartmental reports, I have only got five, I have got sundries, payroll, petty cash, interior report?

A. When you say sundry, you mean sundry creditors' invoices, which I say there was 18,000 of.

Q. Yes, and interdepartmental reports?

A. Interdepartmental reports, yes. 5413

Q. Have I covered them all?

A. I believe you have.

Q. That is five items?

A. There may be some items I did not remember at the moment.

By the Master:

Q. Mr. Brundage, how many separate documents and reports or vouchers would it require to be produced here to support the entries in this book now being offered in evidence, for the year 1918, right back to all of the original daily memoranda or other slips or sheets in the various branches and works— 5414 separate documents to be produced here?

A. Now, you are going back to the original source —the works tickets?

Q. Yes, all the way right back to the work tickets.

A. Oh, it would run into millions, your Honor, millions.

Q. Including 6,000,000 of those cash coupons?

A. Yes, sir.

By Mr. O'Brien:

Q. How many men did you have on your payroll last year?

A. Approximately 3,000 or 3,200.

Q. And that varied. It was never more than 5415 that?

A. I should say not to exceed 3,200 or 3,300.

Q. How many men did you have in your field, street and main department, working for you?

A. I can't answer the question.

Q. It was a small percentage of them, wasn't it?

The Master: That would not test the number of different vouchers they have.

5416 A. Every job that we do, your Honor, through the company, is done on a ticket, and there are millions of them.

Q. Don't say millions, you are an accountant, and we want some accuracy.

A. That is about as accurate as you can get from any human mind, Mr. O'Brien.

The Master: Do you want to ask anything more, Mr. O'Brien?

Mr. O'Brien: No, your Honor, except——

The Master: (Interrupting) I will suspend my brilliant thought for a while as to what I
5417 am going to do. Now, go ahead and talk.

Mr. O'Brien: Now, your Honor, when you began to call the witness to the stand I had just asserted that the accuracy of these books has not been established. It may not be presumed. A cursory examination will show that they are kept in a slipshod and careless manner. You can turn to the account there on the kitchen and the restaurant, and you will find there that in some months they have undertaken to distribute the losses that are sustained in the running of that restaurant, and other months it is not distributed, so far as that
5418 account shows. You go into this book, the operating ledger, and you have all kinds of accounts there that are not accounts of the gas making business.

If they were to be excised from these books of accounts that have to do with the manufacture and sale and distribution of gas, they would not be one quarter or one fifth as voluminous as they are. Now, it needs no argu-

ment to prove that those accounts haven't any 5419
place in this case. Loans made to other gas companies; loans made to other corporations; superannuation accounts; restaurant accounts; appliance accounts; intercorporate relations with these other companies like the New York and Queens, the East River Gas, the United Electric Light and Power Company, the Edison Company and so on. Now, all of those accounts have got to be proven before you can bring them in here. And then even though these books themselves have been made, even though the witness had made these notations, these things of course, would have to be established. 5420
Now, with the treasurer's book, this will give you a fair measure, your Honor, of this collosal work that they have just spoke about. I dare say even I could recite to you now a hundred of these creditors. It is a simple matter. I marveled at the witness' lack of memory as to these various names. I could tell you the man that sold them pipes and fittings, and the men that sold them coal, there is five or six different coal companies, and the various other people that gave them supplies. And so with the repair work that is done. It is a very simple proposition. Now, you take the month 5421
—here is the cash book that notes every check, I assume, drawn by the treasurer. We turn to January 1st of 1918. The account for the previous year is presumably closed here on page 71, and the account for the new year opened on page 72. Well, now, if you sit down and run your eyes down through these various pages, noting the credits and the debits, your Honor will find some idea of the simple propo-

5422 sition of running this gas company. There is the checks that are drawn. That covers from page 72 to page 140, from January 1st to April 30th. Now, I contend it is a very simple matter. There is all the money that is spent. Of course, in some instances it may be a payment of a check covering more than one bill, or more than one bill rendered. It is probably on a monthly statement. And so on the other business of the company, you can go up and go through the 99th Street works, they make only a little gas there. Now, the pay roll account could readily be verified. They have perhaps
5423 some employees that have been with them some time, the clerk up there at the present moment happens to be new in their employ, he has not been long with the company, but Mr. De Castro has been there a long time, he grew up with the gas company; Mr. Kellogg at 42nd Street, 29 years with the company, knows it backwards and forwards, knows every little detail about the plant as they used to run it, and there isn't anything that he needs to talk about except possibly a few little unimportant records of that place. Now, the superintendent for the 21st Street plant can do the same thing, he
5424 could walk into the little office there, they haven't a lot of clerks working, they have a couple of old time employees going over the records that come in from time to time, and when they say we have got to offer these in evidence and produce the witnesses, it does not mean that every single one of the hundred or more employees from the works have got to be catechised in detail as to all of these records.

Their reliability has got to be established, how- 5425
ever, by bringing these men in.

Now, as to the books of account in the main office, or the branch offices, you take some man like Mr. Fenniman, formerly in charge of the Washington Heights branch, now employed in some other branch, well trained in the business, knows it from A to Z, you could ask him and from memory almost he could give you these little matters, and thus establish the same as the records the manner in which they keep track of the meters, the consumers meters. And so you can go through with the engineering end of it during the year 1918. 5426

I assume it is a very small matter, such as the little changes as they made in connection with production of toluol, so I assume, that, knowing that during the period 1917 and 1918, when material was very high, that the gas company would not indulge in doing work that might be deferred until some later period, so that there would not be so much of that. Your Honor, they have got to, even outside of the objections that would ordinarily lie, you have in these operating ledgers, you have so many accounts that have got to be analyzed, so many accounts that have got to be brought 5427
in here and justified as being part of the gas making business, that we will fall into grievous error if these books are admitted.

Now, in regard to the pay rolls, the same thing may be said, your Honor. We are not going to ask for millions of tickets that we may go over them and ask the pay clerk or the time clerk in every case how he did, but they must be produced and offered in evidence. The

5428 man who kept the time and looked after that feature of the work must be put upon the stand, and we should have a reasonable opportunity to cross-examine him as to the way in which they conducted that business.

Now, the same thing may be said as to the main office and the records there, and the journalized book we don't need to say anything about in view of your Honor's statement. Of course, if the journal goes out, the ledger will have to go out. So, your Honor, going through with the—

The Master: I did not mean to intimate
5429 that I was going to refuse to take the journal though I might take other books. If I take the books, I will take them all.

Mr. O'Brien: Yes. I am not going to start to call your attention to the great many things that are in the books, but you take right in this connection now, the treasurer's book, to show you the infinite number of questions of law raised that will have to be settled before the books could go in, we have the American Chemical Society paid money; Winterroth, the Piano people, New Amsterdam Gas $80,000; James E. Allison & Company, I take it that
5430 is the rate expert who will come and tell you about depreciation or lack of depreciation on this plant, $2,197.30; the accounts, various accounts, with the National City Bank and the various affiliated companies; the American Gas Institute; several people names unknown; several I suppose females, in settlement of some accident cases, I assume, without knowing; the names, and the accounts with the National Coal & Coke Company, that run

through these various books that have not been 5431
proven in any way, and we have got to have explained to us just how they run or conduct their coke account, the coke coming through the Astoria company and being delivered to them, the channel through which it comes, and all of that will have to be established before this account could go in evidence here, even though the rule does not obtain on which we base our objection. So with payments, say, to the various people that may be questioned, like the weekly or biweekly or monthly stipend to Mr. Livingston, Robert E. Livingston. We find a great many payments to him, which may 5432
be proper to the business, for all I know, but if it is publicity matter, I question seriously whether we could include it as an expense in a rate case. And so with the automobile concerns the National Coal & Coke Company, the various accounts with their lawyers. It is all important to know just what that account was for, because if the ten or fifteen thousand odd dollars paid to Shearman & Sterling year is a rate-making legal expense, then it ought to be excluded from this case. And so with expenses made for publicity, like to the newspapers, various amounts paid out to repre- 5433
sentatives of the newspapers in the city, not such large amounts, but still in the aggregate, with all the other expenses, they run into money, and they are things that we would ordinarily object to. So I could run through the whole of the treasurer's books your Honor, and show that in a great many instances there is going to be a controversy as to whether they

5434 should be allowed, and therefore on that ground the books must be explained.

Then on the gas appliance business, as I have already said, your Honor, that matter was referred to by the complainant as a source of revenue, and they may say we are going to allow the consumer a revenue on the gas appliance business. Well, now, that is something that must be proven, and the whole expense of the gas appliance business must be set out, the separate accounts, in order to have that brought into this case, and under the ruling in the Minnesota rate case, where the Court
5435 said that the obligation was on the railroad company to keep a separate account of interstate and intrastate business and failing to keep the account which they were in duty bound to keep they had not established their case; under that ruling, your Honor, it is necessary here in this business, which we contend is extraneous to the gas making business, for them to bring in the account entirely separated from the gas making business. Now, if you look to the gas appliance account in the operating ledger, you won't find those expenses there. So far as I could see, your Honor, they
5436 are not in a position today on those books to tell you how much of expense there has been in the gas appliance business.

Further than that, there is a meter repair shop. Your Honor will recall how the other day when I thought the witness referred to the dispensary, I in good faith thought he meant the meter dispensary, where they repair meters, not any horses on the diagonally opposite corner, and I thought he referred to that.

Well, now, in that meter repair shop there is 5437
conducted the repairs of meters of all these different gas companies that you have heard of in the testimony. There in the Central office I went through in a hurried inspection, and I found there that there were accounts kept, the different monthly statements were different colors for each gas company, and there was the Central Union, the Northern Union, the Westchester Company, and then the other various affiliated companies, showing that they were doing business there, that they had their meters repairers, and I assume that the expense is pooled in some way. Well, now, 5438
if that be so, your Honor, that has all got to be gone into and explained, before these generalizations here that are set up in the clearing house books, I may call them, may be received in evidence, and I refer to them as only another illustration of the many problems that must be settled before they should even offer these in evidence. Now, the question of the——

The Master: Suppose I were to find in this case, that irrespective of all of these items that you now question, it cost them more to make gas and deliver it than 80 cents per thousand cubic feet, I would have to find in their favor, 5439
regarding those items, would I not?

Mr. O'Brien: You are referring now to these objectionable accounts?

Mr. Chambers: How are you going to find out about the 80 cents?

The Master: I don't know, but I take it that there is something in these books, that there is something that will be produced in some tangible form to show exactly, leaving aside all appliances and utilization and everything

5440 else, how much coal and oil and labor were used in making gas, how much it cost them.

Mr. Chambers: They buy some of their gas from the Astoria company, and they own a hundred per cent. control of that company. Whether the price they pay is fair——

The Master: (Interrupting) I am talking about the gas they get.

Mr. O'Brien: Well, as I take it, your Honor's suggestion, or your supposition of the situation means that there is to be a situation developed in the proof in this case whereby you could eliminate certain items and the result

5441 would still be the same?

The Master: That is what I had in mind. Judge Ransom has taken the position in the memorandum that I have——

Mr. O'Brien: Is that another memorandum, your Honor?

The Master: No, the one he handed me in support of this motion.

Mr. O'Brien: He doesn't care about the base or the value of the plant.

The Master: He says disregarding all those things that might be a subject of dispute, he expects to show that it costs them more to make

5442 gas, taking coal and oil and labor.

Mr. Chambers: Let me suggest something in that connection. In order to determine, disregarding the Astoria plant and disregarding all these other corporate matters?

Mr. O'Brien: You better let me wind up my argument.

Mr. Chambers: I would like to finish. (Continuing) Your Honor would have to have these books from these plants where they make the

gas,wouldn't you? In other words, if you allow 5443
this book to go in evidence, he may rest his case on that book.

The Master: He would be foolish if he did.

Mr. O'Brien: Your Honor, that leads me to the thought——

Mr. Chambers: Well, it is his proof, he would be entitled to.

Mr. O'Brien: If there was not any other objection to the admission of these books than the fact that on the witness' statement this morning, they buy half of their gas from the company, the entire stock of which they own and control, and that they pay the cost of making 5444
the gas, plus 7% of the invested capital, these books would have to be excluded. The Court hasn't that before them, either in the sworn statement of a witness that the amount is a certain amount, and he knows it, or by anything of any kind in any kind of underlying records. Now, that is only one of the hundreds of reasons, your Honor, why a serious mistake would be made if these books be received. They have got to go into the works, the operations of the Astoria plant, probably, to justify the expenses of the gas that is furnished to the complainant company, and that you can never accept for a 5445
conclusion in this case unless it is established beyond a reasonable doubt that that is a fair price for gas,—it is a reasonable price.

Mr. O'Brien: Now, the same remarks might be made of the relations of the complainant with all of the affiliated companies. All we have before us, your Honor, is a mere notation in these books that they paid those people money. There is no proof before the Court

5446 that it was necessary in the gas business that that payment be made; there is no proof before your Honor as yet, that the method by which they did their business, buying gas and selling gas to these people, exchanging gas with these affiliated companies, was a wise way. There is no proof before your Honor that they conducted an efficient and economical method of making gas in the 21st street station and the 99th street station, in the face of the results at Astoria. So, these very, very many questions have got to be settled before these books can even be offered, and as to the

5447 books themselves, the rule stands out, and I do not think on the law it needs much argument. Now, I say that these books should be excluded for the reasons we stated this morning, and for the further reason that there has not been any foundation laid. They have not established the necessity of making here an exception to a general rule. There is no guarantee and no proof before the Court of the trustworthiness and the accuracy and the fidelity of these records. They are not even records made in the first instance, and primarily from the original records. That they

5448 are not complete; they stand alone, and without the records they do not present a complete statement of the existence of the receipts that are recorded. That to a large extent the items that are shown in entries and in figures indicate transactions that are extraneous to the gas making business. The conducting, the building and maintaining of a nineteen story building where the gas making industry might be conducted on two or two and a half o

three floors, the maintaining of vacant space 5449
in that building, the maintaining of restaurants and lounge rooms, and all the other matters there would have to be justified and explained before your Honor. The erection of an expensive building in the wartime period on 57th street, where they have only three or four floors, where they went to a tremendous expense in building such an office on one of the most appreciated streets in the city, and the many details in connection with that transaction, all of which were extraneous to gas making business, would have to be justified, as
would also the loans made by the complainant 5450
company to those mentioned in the books.

Now, beyond that there are suspense accounts that are not explained by the underlying data, presenting a complexity of figures that nobody can unravel unless that explanation be made by foreign witnesses. Take the miscellaneous suspense account, that the witness himself could not give us a clue to, except in the most general way, and yet they ask you to receive that in the record of this case as an accurate record and as the original statement of expense.

The Master: If Judge Ransom is correct 5451
in the memorandum that he has given to me that the present statutory rate does not defray the operating cost, the cost of coal, of gas oil, of labor and materials, and he proves that, we will not have to go into the matter of the nineteen story building.

Mr. O'Brien: Then he does not need to offer the books, and we can reduce this to a simple proposition. All he needs to do would be to

5452 bring in his vouchers of payment to the Standard Oil Company. They bought all the oil, I assume, from the Standard Oil Company of New Jersey.

The Master: I don't know whether they did or not. I see some bills here of L. Sonneborn's Sons, who happen to be clients of mine, and who sell oil.

Mr. O'Brien: That is lubricating oil, isn't it?

The Master: They sell all kinds of oil. Whether it is gas oil or not, I don't know.

Mr. O'Brien: The payments to the Standard Oil Company in large amounts. They don't
5453 need a van to bring in the checks to the Standard Oil Company.

There are half a dozen people they buy coal from, the Lehigh, and Reading, Stokes and Sons, and one or two others, and some retail dealers. After that what have you got? The labor, and there has not been so much labor. The question of the works—why? Over at 11th street there are perhaps three men covering those blocks, with two men across the street in the governor house. I don't know how many are working in the gasmaking plant at 21st street, but thirty or forty men might cover it
5454 all.

Mr. Ransom: Of course, all these statements of testimony by Mr. O'Brien are far afield.

The Master: They are not testimony; they are argument.

Mr. O'Brien: The plant at 42nd street has a couple of old watchmen, and this old employee, Mr. Callogg. At the other stations likewise, there are few employees. I counted up the number of men at the 99th street station, and I

suppose there were 35 or 40 people employed 5455
there. Going to the holder station at 111th street, half a dozen would cover the employees. Going to the tunnel at 132nd street, there are perhaps two men employed there, one days and one nights. Going up to the Fordham station, while there are a number of men now painting the holder in the station house, perhaps half a dozen employees would cover it all. So, on the question of labor, this thing is not so colossal.

The Master: I will hear Mr. Chambers.

Mr. O'Brien: Will you let me give you the further reasons? I started to mention some. 5456
I mentioned the fact that a number of accounts are included that are not justified, and so far as we can see, they are extraneous to the gas-making business. The fact that many of the accounts are not complete; the fact that they have not even shown here an audit of the accounts. The witness did not seem to know but very little and only in a general way, about the accounts that were kept. The fact that comparatively few men work on the books, shows that there is not such a large number of men to be brought in here to be examined in connection with the books of original entry. The fact of 5457
the economy and efficiency of the making of gas in the year 1918, has not yet been established, and that the expenditure of money involved in the items shown in these books is still unknown to your Honor. Nothing is shown. We do not know that they had these transactions. We do not know that they actually received this gas except the statement of the witness that no check was drawn until some paper came along with a number of signatures

5458 on it of employees, and such presumption as might arise out of that fact. The fact that the coal and oil contracts have not been proven. The fact that the expenditure of money in that direction has not been properly established. There is no testimony before your Honor——

The Master: I do not believe that Judge Ransom expects me to assume that the charges made here and prices paid for coal were reasonable, until he proves it.

Mr. Ransom: Of course, we are going to prove all these things, as I have repeatedly said.

5459 Mr. Chambers: You might rely on this book.

The Master: I have indicated already, Mr. Chambers, that he cannot expect me to find that the amount paid for coal was a reasonable or proper amount on this record.

Mr. Chambers: That is just why it should not be admitted.

The Master: If he rests on that, it will end his case.

Mr. Ransom: These things prove the outlays. After that we have got to offer certain proof to justify the outlays.

Mr. O'Brien: Your Honor, what you said about coal and oil applies to every expenditure 5460 of the company. They have not as yet established the system by which they make gas. For all we know, there should be some other systems that they ought to have resorted to. Hence these books at this time must be excluded. The intercorporate relations have not been justified as yet, nor properly explained. We do not know whether that system that Brother Brun-

dage explained as to determining debits and credits. 5461

The Master: There are a lot of items of proof that are missing, even if these books went in.

Mr. O'Brien: Wouldn't it come right down, your Honor, to justifying the computations that were made before these entries were made in the books?

The Master: Mr. O'Brien, in my mind, this question always gets around one narrow point, and that is this, are these books, in the light of the more decisions in cases involving large quantities of vouchers and witnesses, books that the Court will receive as books of original entry? Is it the kind of a situation where it is practically impossible to get better proofs without in substance denying the complainants the relief they claim they are entitled to? 5462

Mr. O'Brien: Even if he assumes that there is a little doubt about the practical possibilities, wouldn't it be the proper thing to allow us to proceed along that line, and then you determine, after this has been started, just how far it should proceed?

The Master: Let me finish what I was about to say, will you? All of this argument—I am saying this for the benefit of Mr. Chambers so he will not spend any time on it, on the items not being chargeable to gas making. 5463

Mr. Chambers: I won't say anything about that.

The Master: There being no proof that the prices charged were reasonable, that the contracts were honestly made, that there were not secret rebates of some kind, and all these

5464 sources of attack as to the propriety of charging these amounts to the gas making account, are matters that will have to be handled later on. My mind is confined entirely to the point, is it a feasible thing to get all these original records, books, vouchers, checks and stubs, and are these books sufficiently proved to justify their use, and are they in a sense, or in the sense that in some cases they have been used, the original books of account?

Mr. O'Brien: Your Honor, I think the testimony of the witness has clarified the situation very much, and that there are so many matters
5465 involved that the situation absolutely requires the presentation of the supporting data.

The Master: I think I have got your point of view.

Mr. O'Brien: In regard to that of course after they are produced the extent to which we may indulge in cross-examination will still be before your Honor and you will exercise such authority as you have as Master in determining the extent to which that may be reasonably gone into.

There are so many questions, though, like the allocations and distributions of account, the
5466 question of repairs, the overlapping of one year into another, the questions of whether the survey made and inventories made, or whatever they may be, were correct at the beginning and end of the year. There are so many things, your Honor, that it would be a most unusual thing on the statement here by the witness that they simply had this system if they should be received. The witness is not even an auditor that has gone over these books and audited

them, having before him these underlying papers. 5467

The Master: Yes, I understand that.

Mr. O'Brien: He has shown us here that his knowledge is only a general knowledge; he does not claim to know the details of them, he does not claim to know the accounts. He cannot say that they are accurate, and at the very least, your Honor, they would have to have some one here who could say that he has gone over those books, he has audited these accounts, and he knows they are accurate. And even if you had a witness who could say that there would still be that insurmountable difficulty 5468 in the fact that they are not books of original entry.

The Master: Mr. Chambers, let us hear your version of it.

Mr. Chambers: Mr. Master, you have been patient and I will be very brief.

The Master: I want to spend all the time necessary, because this is a rather important feature in the case. As I said before, I do not want to spend any unnecessary time at the expense of other matters. I do not want to take up any unnecessary time if this proof for the time being is sufficient to proceed further with 5469 the case.

Mr. Chambers: I will start off by saying, if the Master please, that the basis or genesis of many of the rules of evidence I will concede was built up because of convenience and necessity. But there is no reported case that I know of or ever heard of where the rule of convenience and necessity has been pushed so far as to deprive the defendant of the right of cross-ex-

5470 amination of a material witness. That is so even in rate cases.

Let us get it firmly fixed in your minds, because I think your Honor is laboring under a misapprehension as to the holding in some of these cases. I have just picked out of Mr. Ransom's cases a few statements to show that the same rule which has existed always is still in full force and effect. Take the case of the Northern Pacific that he cites, his first case in 91 Federal. He cites it first and I take it he places a good deal of reliance on it because he puts it first. The Court said, and I am reading
5471 from his version or that part of his opinion which he picked out as being apt: "These tables were compiled pursuant to the directions of the general officers who testified that they were correct." He has not produced a single witness here yet, not yet, that has testified to the accuracy of these books. That is point number one. There is his own case. Now the court went on to say: "These clerks were not called to testify that the several computations made by them were correct, but the heads of the department under whose immediate supervision the work was done were called as wit-
5472 nesses." He has not called a single head of a single department, with the single exception of Brundage, who knows very little about the contents of the books.

The Court further observed: "The clerks were also present in the building where the testimony was taken, as were likewise the way bills and other records." They were all present in court, the records from which they made their computations. "Counsel for the defend-

ant was invited to call any of the clerks for 5473
the purpose of cross examination." Bear in mind that the Court always had present, always present, the proposition that the defendants were entitled to cross-examine those who knew about these records.

Now let us jump over to another case that he cites—and all of these in between are not in point. He cites and quotes at length from the opinion in the Queens City Savings Bank & Trust Company case, 171 Appellate Division, where the Court, in writing the opinion—the Court of Appeals, said: "It is shown that the books are books of original entry"—showing 5474
that the Court still had in mind the rule which has never been changed; and the Court further observed: "And when the entries are duly proved by the persons who made them as having been made by them, on the dates shown in the regular course of their employment". Your Honor has already noted that substantially all of the entries in this book, Exhibit 189 for identification—I will speak of the others later,—are made by some other person other than Brundage, who is not called, and whom we have not had the right to cross-examine.

5475

Let us see what the Court further observed in that same case: "The entries accordingly must have been made in the regular course of business and must be testified to, if possible, by the enterer". I take it they had to call the enterer or else to show that it was impossible to call him; "who must be shown to have been the one whose ordinary business it was to make such entries, and that such entries are to all

5475 intents and purposes, or as nearly as possible, original entries, such as the business of the bank requires.

Now let me show you the viciousness of the offer of this Exhibit 189 for identification in evidence. In this book will be found the summary of a payment made to the Astoria Company of 62 cents per thousand for gas supplied to the Consolidated—62 cents per thousand. In this same book will be found a payment by the Consolidated to the New York Mutual Company for gas furnished to the Consolidated at 53.74 cents per thousand. In this same book
5477 will be found the summary of a payment made by the Consolidated to the Standard, for gas furnished by the Standard to the Consolidated at 44.68 per thousand. In this same book will be found a summary of a payment made by the Consolidated Gas Company to the New Amsterdam Company for gas furnished to the Consolidated at 60.39 per thousand. You notice right off that they paid the Astoria 62 cents; they paid the Standard only 44.68 cents; they paid the New York Mutual only 53. If that book goes in evidence, we will be deprived of the right to cross-examine the persons who
5478 know about the details of those transactions. The complainant owns all of the stock of the Astoria Company. Isn't it significant that they paid the Astoria Company 62 cents a thousand to a company of which they own all the stock, and then right at the same time they pay the Standard only 44.68? Let me go a step further.

The Master: Do you understand they are going to charge that as expense of manufacturing gas here?

Mr. Chambers: I take it that if we look after 5479
the rights of the people we represent here, carefully, we have a right to challenge the payment they make of 62 cents.

The Master: If they want to rely on it.

Mr. Chambers: We have a right to see the vouchers, and the books of those entries.

The Master: Yes, if they want to rely on it.

Mr. Chambers: That brings me to this point in the argument: If this book Exhibit 189 for identification is now admitted in evidence, I take it that it is admitted for all purposes.

The Master: No, for all proper purposes.

Mr. Chambers: I do not think your Honor 5480
has a right to limit it, because your Honor could not now lay down a rule by admitting that book in evidence, whereby you are limiting it to the things that are proper, and exclude the things that are improper, because we do not know about them all. You might lay down a rule, and you might miss many of the important features or objectionable features. This same Consolidated Gas Company, you will find the figures in here by way of a summary without and details, pays the Standard Gas Company for gas—no, they sell to the Standard.

5481

The Master: Let me interrupt you a minute, will you, Mr. Chambers. Suppose they produced a witness familiar with the facts and he said, "Irrespective of these records, I know that we got a million cubic feet of gas from the New Amsterdam Gas Company; I know that because I myself measured that gas that came through, I saw it coming through and I myself paid them 62 cents per thousand

5482 cubic feet." Well, suppose you started to cross-examine him and you get no further than the fact that he got that much gas and paid that much for it, that he did not know how they made that up, did not know anything about it, did not know the basis on which it was charged, or that it might not have been paid on a cost plus ten per cent. on invested capital, and that is all he knew. His testimony would be competent, wouldn't it?

Mr. Chambers: Most assuredly. We would be confronted with it and we would have a right to cross-examine him as to how
5483 much he knew about it.

The Master: Get the point. You agree with me, I think, that a witness called to testify on knowledge that he knew a million cubic feet of gas had been delivered, for which the Consolidated had paid 62 cents a thousand, was a proper witness and that that was proper testimony, don't you?

Mr. Chambers: Yes, delivered on the stand by a witness—common-law proof.

The Master: Yes, I will assume for the purpose of my discussion with you, and what is in my mind is, that that is all the witness knows about it, all you can get out of him. The
5484 facts testified to by him would remain, would they not; namely, the receipt of so much gas and the payment of so much money?

Mr. Chambers: Yes.

The Master: Does this prove any more than that?

Mr. Chambers: I should say so.

The Master: How much more?

Mr. Chambers: How can we say from the

mere entry of a transaction in here with the Astoria that it is a *bona fide* one? How can we say what underlies it all. 5485

The Master: I understand that. The same criticism will be made of the oral testimony of the witness. You cannot say whether it is a *bona fide* or not.

Mr. Chambers: If I cannot get any more out of the witness than is suggested I would have to be satisfied.

The Master: But that would be the result of this testimony, wouldn't it? Follow me a minute.

Mr. Chambers: I would have had then all the law gave me—the right to cross-examine him. 5486

The Master: Yes, I am assuming the unusual situation of a witness who only knew that they got a million cubic feet of gas from the Astoria company and that they paid them so much money; that is all.

Mr. Hayward: Wouldn't we have a right to ask him how he knows that? He just says it flows through the meter and we were to cross-examine him on it.

The Master: Wait a minute, Col. Hayward. I am getting at another point that I want to make clear, appropo of something Mr. Chambers said. I am trying to see how far these books are apt to do any damage. I will assume now for the purposes of this discussion, although I do not think I need assume so much, that if these books are received in evidence they will prove—I am assuming more than I am justified in assuming—— 5487

Mr. Chambers: Let us say what the witness

5488 said. He said these books showed all the expenses of the company for the entire year.

The Master: I will follow you to the point of assuming for the purposes of the discussion that if these books are offered in evidence they will be proof of the fact that a certain amount of gas was received from the Astoria company and a certain rate or amount of money paid for it. That is what you claim, isn't it?

Mr. Chambers: That is what I claim.

The Master: You do not claim it proves any more than that, do you?

Mr. Chambers: Well, I would not want to
5489 say that it does not. But isn't that enough to show they are inadmissible?

The Master: No, I am trying to get the danger underlying the situation.

Mr. Chambers: Well, let us say it proves that.

The Master: You were saying when I interrupted you that it does not disclose the underlying agreements of secret arrangements or whatever the arrangement was between the parties.

Mr. Chambers: Nor does it give us a chance to test the accuracy of the matter.

5490 The Master: What occurred to me was if the witness were produced who swore to the amount of gas delivered and the amount paid, which is all this book shows or purports to show, you would still be in the same position, you would still be up in the air as to what the corporate relations were.

Mr. Ransom: We would not prove it by such a witness; we would have to prove it by another.

Mr. Chambers: It would show so much gas 5491
delivered by the Astoria Company, about which we are entitled to inquire.

The Master: Yes.

Mr. Chambers: And such a payment made to the Astoria Company, and all those records relating to that transaction, are somewhere. They are either in the Astoria plant or somewhere, and we are entitled to have them produced. They are the best evidence.

The Master: That is just what I was going to say. Your argument gets down to the point that this book or these books are not the best evidence of the amount of gas delivered by the 5492
Astoria Company to the Consolidated and the amount of money paid therefor.

Mr. Chambers: They are not only not the best evidence; they are secondary, they are hearsay; they have not shown them to be accurate, and they deprive us of the right of cross examination, which no court has ever deprived a party of. If your Honor please, you cannot find a single case, and I defy counsel on the other side to find one, where counsel has been deprived of the right of cross-examining the entrants who made the entries.

I took Mr. Ransom's own memorandum. I 5493
did not need to go any further. I have shown from the cases cited that cross-examination was allowed. The fundamental error into which he has fallen is that it is depriving us of the right of cross-examination. If we do not obtain a single thing of cross-examination, we have had our cross-examination, but that is our funeral, and not the Court's.

Now, let us see. If your Honor admits the

5494 books in evidence, in addition to the other grave matters which I have pointed out, you will then have shifted the burden of proof, in my judgment, from the complainants to the defendants. You spoke a moment ago about the questions involved. How much does it cost them; how much did it cost them in 1918 to make gas in this city? In order to satisfy yourself on that question, you must necessarily go into these plants where they make gas; you will have to find out how much oil they use; how much coal they use; how much the oil costs per gallon; how much the coal costs per ton; what labor
5495 was necessary in order to make the gas that was made there; how much gas they made, and all of those other details which are found there in the plant, and they are obliged to prove it and produce those things.

The Master: And they have got to prove those facts, Mr. Chambers, to the satisfaction of a Court almost beyond a reasonable doubt, haven't they, Mr. Chambers?

Mr. Chambers: Right. Then why do you need the books at all?

The Master: Let me ask you, do you believe when these books are in evidence that there
5496 is any possibility at all in the world of their having satisfied me beyond a reasonable doubt on those items?

Mr. Chambers: Well, your Honor, I do not know about yourself.

The Master: Do you think any court would be satisfied beyond a reasonable doubt on these items?

Mr. Chambers: I say this: if these books are competent evidence of the matters entered therein, and you admit them in evidence——

The Master: You think a court ought to be satisfied, do you? 5497

Mr. Chambers: I think they ought to rest.

The Master: Then I ought to receive them.

Mr. Chambers: No, I do not say any court would.

The Master: I do not believe any Court would.

Mr. Chambers: But I say this: They are admissible for the matters set forth therein.

The Master: If they prove the facts set forth in those books, to the point that having in mind the rule and the burden placed upon complainants in rate cases, and you go so far as 5498 to say that once I admit these in evidence, a court or Judge ought to take them and ought to be satisfied with them, and that they prove the fact beyond a reasonable doubt, I think you are accentuating the proposition that they ought to go in. I look at it differently. This is the way I look at it. I am not at all satisfied with these books. I do not at all feel that they prove this case.

Mr. Chambers: Then why admit them?

The Master: I will approach my thought in a minute. If this case were to rest upon these records alone, without additional proof, satisfying me beyond a reasonable doubt, that the 5499 contracts made for coal or gas oil were right, and that other matters of that kind, especially if the question of buying gas from other companies, is not proved up pretty satisfactorily and conclusively, I would say I disregard these. I am not satisfied with them.

Mr. Chambers: Do not be hasty. I am going to ask you a question or two.

5500 The Master: Yes, but when I put all these books in evidence and the accounts for the defendants have analyzed all the vouchers and all the books, and there is no complaint made to me of the inability to get anything, when we get all through, and an accountant comes in and says, "Now, I have looked at these books, and I have checked them up with vouchers here and there, and I have analyzed these figures, and I have segregated here the amount I find was paid for coal, and I have segregated the amount paid for coal oil, and I have segregated the amount paid for labor, and it seems that

5501 I took these books as the basis, checked them with original vouchers and documents"—I will come pretty near something that will satisfy us of the cost of coal.

Mr. Chambers: Your Honor says you would not take them as proof of the matters set forth.

The Master: Not standing alone.

Mr. Chambers: Then I will tell you why they should not be admitted.

The Master: I thought you were trying to tell me that right along.

Mr. Chambers: On your own proposition. You say our accountant could go and examine

5502 all of these underlying vouchers and records and if they did not find any errors or make any complaint you would assume the record was correct.

The Master: Yes, I think the cases indicate that is the proper practice.

Mr. Chambers: Your Honor will not find any such case that has ever been reported, that I know of.

Mr. O'Brien: May I interject something 5503
here?

The Master: Not over Mr. Chambers' objection. Do you yield to Mr. O'Brien?

Mr. Chambers: Yes, but I may forget my point.

Mr. O'Brien: I want to say right here that there is no obligation, of course, on the defendants to do anything. We can just simply sit dormant until they present their proof, and your discussion and your contemplation with regard to whether these ought to be admitted, should assume that there may not be anything more in this case than what the complainant 5504
has said.

The Master: That is right. I am going to give you the same answer that I made to Mr. Chambers. I cannot assume any such foolish proposition, because I am assuming that Judge Ransom really knows more about this case than to rest it on these books.

Mr. Chambers: He is the only attorney for any complainant that has ever offered the books in evidence first as a part of this case.

Mr. O'Brien: Pardon me a moment in this discussion, then I will give way to Mr. Chambers. When you accept them in evidence don't 5505
you assume they are accurate?

The Master: I assume that they are books kept in the ordinary course of business, with the usual presumption that records of this kind kept by a concern of this character, with all of the usual safeguards thrown around them, are presumed to be fairly accurate.

Mr. O'Brien: And you assume also that they are complete?

5506 The Master: And I shall assume in so far as they are covering the matters that they pretend to cover, that they are complete.

Mr. O'Brien: The examination of the witness shows both of them are wrong assumptions.

Mr. Chambers: We have not heard of the entries. When have we heard anything of the accuracy from a person who knows?

The Master: But we have heard of the very elaborate and complex system of getting these books in shape, how they go through a certain system of checking and cross-checking.

5507 Mr. Chambers: But there is a way to do it, and the right way.

Mr. O'Brien: There are a lot of things involved in the running of the business that might be eliminated from this case if your Honor receives these books. I do not mean the coal-oil end of it and all that, but certain other big factors that must be covered under your Honor's view of the situation tentatively. I mean the method of buying various supplies and the questions whether there were rebates, whether they were fair prices for the material, the method of keeping the records down below, the

5508 question of whether kept accurately or not. The mere dictum of the witness that they have an error of proof of system does not make it so.

The Master: Let Mr. Chambers finish, Mr. O'Brien.

Mr. Chambers: Apropos of what you were saying as a practical proposition, let me demonstrate to you how unfair it would be to admit the books in evidence and send out accountants

up there to go through these thousands of 5509
vouchers that he has spoken of.

The Master: Will you let me interrupt you again, Mr. Chambers?

Mr. Chambers: Yes.

The Master: And do not lose your thought, because I am going to try to talk about the same thing. Suppose I rule that they would be required to bring here all of their original entry sheets and vouchers and so-called original records—hundreds of them and thousands of them. For the purposes of discussion I will limit it to the 100,000 payroll sheets; that is all I would do. All I could do would be to require the head 5510
of each department to come in and swear that those were the original sheets on which he kept the time and he had no recollection of them except what these sheets showed, and all he knew was that they kept their sheets correctly and paid the labor according to the time. I would have one hundred thousand payroll sheets here.

Mr. Chambers: Yes, do you want to know what I would do, your Honor?

The Master: Wait a minute; I will have them marked in evidence then. I would say to counsel, look at them; are you any worse 5511
off when I said, go look at them without getting them here?

Mr. Chabbers: I would not do all that.

The Master: What would you do?

Mr. Chambers: I would grab out one a month and find out all I could about it, just as I did in the Albany case.

The Master: What could you find out?

Mr. Chambers: That remains to be seen.

5512 That is just it. We are entitled to have the men here who know about them, subject to cross-examination as to how they are numbered; how they are filed; how they are made up; who makes them, for the purpose of aiding our accounts, as to how to advise us whether they are correct or not. If we did not find anything after we have heard these witnesses, who know about these vouchers, tell us how they are kept, how they are made up, how they are preserved in the archives, then we are able to check them up.

The Master: But you have the burden of
5513 checking up just the same.

Mr. Chambers: If your Honor please, that is a different question. But we are entitled to have the benefit of the testimony as to how they carry on their business. This book does not show us. We do not know, as a matter of fact, whether they have any vouchers that we could check up, as the case stands now.

The Master: The complainant says that they have.

Mr. Chambers: We are entitled, if your Honor please, when they have thousands of vouchers, to have the men come in here and
5514 tell us how they are kept, who keeps them, how they are made up, what is in them, at least one voucher a month, or one voucher in two months, of all the different kinds of vouchers.

The Master: Let me give you another thought that runs through my mind in trying to reach a conclusion, Mr. Chambers. If I leave these books in evidence, and I am in error in doing that, and Judge Ransom proceeds to complete his case, and the findings,

we will assume, are in his favor—because that 5515
is the only way that you might deal with that—
and suppose you are right in your contention,
and the case goes up to the United States
Supreme Cout, they will say the Master is
just plumb crazy, they are sorry for him, he
did not know what he was doing, a perfectly
innocent fool.

Mr. Chambers: I would not put it just that
way.

The Master: I am putting it at its worst.
And suppose they strike it from the record.
Judge Ransom is pretty badly injured, isn't
he? He has gone through with this case, and 5516
he has no record; isn't that right?

Mr. Chambers: Yes.

The Master: If I refuse to take them, and I
put him to the necessity of bringing all these
people and all these records, and we spend
three months on that branch of the case, and
Judge Ransom is right in his statement that his
client is losing many thousands of dollars a
day; I am doing him a pretty serious injury if
I am wrong in that ruling. Isn't it my duty as
a Master to support Judge Ransom, and let
him suffer if he has led me into an error?

Mr. Chambers: No, my position is, your 5517
Honor, as a member of the bar, I should ask
you not to commit an error, if you are com-
mitting one.

The Master: No, but assuming I am in error
either way—because human judgment is falli-
ble,——

Mr. Chambers: We have the rule of the law.

The Master: Yes, and I am trying to decide
it according to the rule of law. You contend

5518 for one ruling and Judge Ransom for another. If I sustain your view of it, and I am not at all impressed with the argument, it means that Judge Ransom is put to the burden of bringing down a lot of records and men, and bringing down vouchers, taking up weeks and weeks and months of time, for which I will be paid; do not forget that.

Mr. Chambers: I have not said that, your Honor,—that, your Honor, that he must bring down the vouchers.

The Master: Because I will be paid, no matter how I decide this case. It does not make
5519 any difference. The longer I spend on this case, the probability is that having in mind the matters are usually reached, the more I would be paid. That is not the basis on which men ought to be paid. But I will be doing Judge Ransom a very serious injury if I err that way. Now, if I err the other way and support Judge Ransom's contention, he is sharing with me the responsibility for my error, because if he goes up to the United States Supreme Court and they find I am wrong, he has done this for nothing, and he has done his client a very serious injury.

5520 Mr. Chambers: I did not say bring down all the records. I have not suggested that.

The Master: I am inclined to let them in and take my chances on being wrong there. I think I am right.

Mr. Chambers: If your Honor does that we want to examine the men. I say this in connection with our objection, that you thereby deprive us of cross-examination. We will say nothing about all this underlying data, leave

that out, and say that they do not have to 5521
bring a thing, in that case we are entitled first to have proof that these books are accurate.

The Master: I think there is sufficient proof of that.

Mr. Chambers: Second, we are entitled to examine the men who made the entries, if they are alive or within the jurisdiction, those who made the original records. Third, we are entitled to examine the superintendents of those various plants. There are only a few of them. I showed here this morning that there is a superintendent for each plant. Some of the holder and other stations have not any super- 5522
intendents, but I think we spoke of probably half a dozen superintendents who made these original records. It is no hardship at all to call them prior to the introduction of these books and give us a chance to examine them about their records, and have them bring with them their records.

Mr. Ransom: There are 30 superintendents.

Mr. Chambers: I cannot say any more. Your Honor is responsible for your ruling.

Mr. O'Brien: Apropos of the statement made by your Honor that you might engage three months in the task of having cross-exam- 5523
ination on the original records and subsequently it might be found that you were wrong——

The Master: No, there would be no way of telling that I was wrong then.

Mr. O'Brien: No, but what I say is suppose we started in tomorrow, you make your ruling and you say they have to bring down their underlying data, bring in the men to establish

5524 how these accounts were made, and we proceed, and they brought down one bundle of proof and we proceeded, your Honor would still have his discretion to terminate that. If there is needless cross-examination you could say, "I am satisfied about that." In certain tests that you apply the reliability of the records have been established and you might say I won't allow you to proceed any further. Your Honor then can make such ruling as you see fit.

The Master: Mr. O'Brien, I am going to decide this on what I concede to be the only prac-
5525 tical way of disposing of it.

The Master: I am not prepared to say that I am absolutely right. I think that in ruling as I am about to rule I will probably stretch whatever decisions have been made on the subject further than they have ever gone. I am not prepared to say that I am going to stand by the ruling I now make throughout the case. It depends on what develops and what turns out. I am led to the ruling I am about to make by a number of different notions——

Mr. Chambers: Your Honor, can I observe one more thing before you rule? It is a very
5526 important one. I have not said anything about it as yet. We suggest that you shift the burden, if you admit these books, to the defendants, and thereby compel us to bear a burden of expense that is outside of the money appropriated.

The Master: In what respect?

Mr. Chambers: We haven't money enough to examine all these vouchers.

The Master: But you have got to do it.

Mr. Chambers: We haven't the time and we 5527
haven't the money. They know all about them. For all these years they have been building up these records, and you ask us, with a limited appropriation and only a few men available to go in and find out how they have been conducting their business.

The Master: I don't know that I am putting any more burden on you than if I required them to bring the original vouchers.

Mr. O'Brien: That burden is theirs by virtue of a rule of law, that the statute is assumed to be constitutional. The law has placed that burden on them. 5528

The Master: I have had in mind this burden of which you are now complaining, and as I see it, if I were to say that I will not take these books, that I want them to produce the men who made the entries, and I permitted you to cross-examine them, I would only do it to the extent of satisfying the record that the vouchers were genuine, and that the records were accurately made. Now, there would be 100,000 pay roll vouchers, 18,000 sundry creditors' vouchers, and Lord knows how many other reports and vouchers, and I should only permit the examination to go so 5529
far as to show the genuineness of the papers. The burden would be there just the same, if you feel that you should check these accounts against the vouchers. I do not think I am putting any additional burden on you if I let the books in.

Mr. O'Brien: Yes you are. In handling this question you must assume that we have

5330 no burden except to hear their proof and to make objections.

Mr. Hayward: I want to be heard before your Honor rules.

Mr. Chambers: I will finish in one minute more. About the treasurer's cash book, there are two treasurer's books. This witness says he knows nothing about them, they are really books of the treasurer. There is no proof, the treasurer is not brought here. Are we to be deprived of examining these officers of the company? It looks so to me.

Mr. O'Brien: Take the payments made on
5331 executive order.

Mr. Chambers: I will say frankly to your Honor that we have not the money and we have not the men, and we have not the time, unless your Honor will give us a few months to go over these vouchers and records.

The Master: I do not know how long it is going to take Judge Ransom to put in his additional proof, but during all the time that he is putting in the balance of his case I am going to permit you to call attention to anything in these records, and permit your experts to go through them.

5332 Mr. Chambers: We cannot tell how they are made up.

Mr. Ransom: That will very quickly appear, as I indicated to your Honor, as we are going right ahead along the line of proof I have indicated.

Mr. Chambers: I suggest that your Honor go up there and try the case in the Gas Building, and then they would not have to cart the records.

The Master: I am going to answer that in 5533
this way: When I was appointed Master I had the problem before me as to the place where the examinations should be conducted. I took the matter up with Judge Mayer. I saw at once that my office room would be inadequate because of the large number of people who would have to be there. It then occurred to me that we might get a room at the Bar Association. Then the question of expense came up. The Judge and I agreed that it would not be well for me to pay the bills of the Bar Association for the room, nor would it be proper to charge it or request either side to pay it at this time. The 5534
question came up as to using a room in the building of the Consolidated Gas Company where the records were available, and we concluded that that would be unwise and subject to criticism, because nobody in the world can ever tell what somebody may say about working up in the Gas Company's building. The result of all our conferences was the suggestion that I might be able to get a court room, and we finally managed to get this room temporarily. I understand we will have to get out of here in a week or two and will have to look for other quarters, but I do not think it wise to go into the Gas 5535
Company's building to conduct this hearing.

Mr. Chambers: You mean to save the necessity of bringing these records?

The Master: I think possibly that would be criticized, and might be misunderstood. I know that the men in this case would appreciate the situation and see how convenient it might be from any aspect; but I am afraid somebody else might find room for criticism.

5536 Mr. Ransom: We of course have had to have these books down here on a number of days. These books of course are related to many thousands of vouchers which the accounting staff of the commission are examining. We have had very vigorous complaint to-day, and other days, that their work is held up because of the absence of the books.

The Master: We don't care anything about that. Your clients are looking for very substantial relief, and all litigants find that it is a great trouble to have witnesses come into court day after day.

5537 Mr. Ransom: I am not complaining from our point of view, although it does hold up our work. I am calling attention to the difficulties from the point of view of those who are working on the vouchers.

The Master: There is nothing so burdensome to litigants as to have to bring the office staff and records into court day after day.

Mr. O'Brien: I do want to say, your Honor, that I hope this error will not be made. I want to see the case complete, I want to see the record when we get through one that will be convincing to the defendants and the complainant,

5538 and that will produce a conviction for all time——

The Master: I will not decide it tonight. Let Col. Hayward have his say.

Mr. Hayward: There is no use of my going over this matter that the other two counsel, my associates, have gone over, but there is an entirely new thing that I do not think they have covered, and which I do not think has occurred to the Master.

Taking up the first part of it, it is this: It 5539
is not fair for you to say to us, "Now, this is not going to hurt you people." Judge Ransom cannot rest on these books. He has got to bring other and substantiating proof in here." That is not fair to us. We are protected by the rules of evidence. Now, your Honor, if they do not hurt us, they do not help him, and they do not help him, they are not material. If they are not useful to them then they should not be in here, they are simply encumbering the record, and if they do help him they are hurting our client and depriving us of rights that the laws of the land give us, and which are given to us 5540
by the fundamental rules of evidence.

Now, Judge Ransom is asking to go further than any case has ever gone. I do not think my colleagues will agree with me, but we will not get far apart. I have said to your Honor, as I have said from the first, basing my statement on an opinion formed from a lot of these rate cases, that if Judge Ransom will comply with any one of the authorities he has brought here, so far as the method of proof is concerned, I will not interpose one single objection. He does not want the modern rule of evidence applied in this case. He wants the Ransom rule of evi- 5541
dence applied, and the Ransom rule is not the rule in modern rate cases. I challenge him to find one case reported in the courts of this country where books analogous to these books were offered and received in evidence. He says that the old ancient rule as to books of original entry has been extended and modified, and I can see that your Honor is going to take that view of it. I haven't any objection to that, but

5342 it has been extended in a certain line, and the courts have clearly said what that is. If we are going to accept what he calls the modern method, why not accept that modern method as it has been clearly set out in his leading case, the Keyes case, the Northern Pacific case, sometimes called the Keyes case. There they did not bring in similar books to this. I do not need to go over that again. Mr. Chambers went over it. They did what everybody else has done in these cases, they took advantage of the use of competent men whose word could substantiate something, they took a Hollerith machine

5343 probably, they took all the modern appliances for proving such things and tabulating this great mass of data, and they did it for the purposes of the trial. Clearly they took this course because it was such a bulk of stuff that it could not be brought to the court room, and they did it for the purpose of assisting the Master, for the purpose of assisting the Court, and assisting the lawyers, they prepared these tabulations not with a view to offering them as books kept in the ordinary course of business, with two or three or four or five or six entries in books, they did just what any sensible person would

5344 do to relieve the Court of the burden of having 120 bundles in here. They got men who were competent, who could put their word on the witness stand back of them, and they took clerks and went over these vouchers and summarized them and made tables of them. I concede that if they will do that I will not object to it. They were made for the purposes of the Court, they were made by men who probably had the Court's direction when they were made

as to what was wanted. They have not done 5545
this, either because of laziness or some other ulterior motive perhaps worse than that, they want to jam down our throats a book that is not a tabulation in any sense of the word within the meaning of these modern cases, and is not a book of original entry. It is neither one thing nor the other.

Judge Ransom, where he offers these cases —I don't know whether he did it purposely or not—in this case of Schaefer against the Railroad Company, offered this:

"Here a corporation engaged as a common carrier, shipping millions in value of pro- 5546
duce yearly, if it could not be allowed to show by the verified and uncontradicted records, then the inconvenience, confusion and irresponsibility resulting would be incalculable".

He left this out:

"Could not be allowed to show by the verified and uncontradicted record *of other connecting lines the disposition and delivery of the goods in question.*"

Of course it is perfectly plain when you read that language as it was written in the opinion, not as he left it out. I say that there is not a 5547
single case reported in the United States, and if he will bring one here I want to see it tomorrow morning—where the Courts have not done one of two things, either stuck to the good simple old principle of books of original entry, original vouchers, original documents—and we know the reason for that rule, we know it was the result of years and years of experience with human frailties and human rascality

5548 and human trickery. Now, in these modern times we have advanced a step, but not on anything but quantity. We cannot bring those items here, they are too great. What do they do then? They offer a substitute, and what is the substitute. Not a hermaphrodite book, which is not a book of original entry, which is not contemporaneous, which is the result of five or six transfers and copies from one book to another made by God knows who, with no man's word back of it. It is a computation supposed to be made by a man of character, because he is an officer of the company, made under his immediate supervision by a
5549 force of clerks, and they are seeking to be relieved of the burden of this extensive proof, and therefore they must assume the lessor burden, and that is to get a crowd of clerks together and go through the records and make tabulations of them for this case. If they do that I will not object, but I do object to being deprived of my rights as counsel for one of these defendants, by having this book, which is not a book of original entry offered and received in evidence. I say it does me harm, and I have a right to call on the rules of evidence to protect me, and if it does not hurt me
5550 then it is not material and should be out.

The Master: We will adjourn until tomorrow morning at 10 o'clock.

Adjourned to Wednesday, August 20, 1919, at 10 o'clock A. M.

Last Complainant's Exhibit 203.
Last Defendants' Exhibit T.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 5551

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, August 20, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS, MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD and MR. CLARK, of Counsel for Public Service Commission. 5552
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: If the Master please, may I record a protest? I find the hours here too long and too exacting. I have been thinking it over, and I do not think it is fair to the defendant to penalize the Attorney General because he was obliged to go to Albany and finish up the Albany case.

The Master: Well, we only have two more 5553
days of it.

(Discussion off the record.)

Mr. Chambers: If your Honor please, there is a little word "not" left out at page 1853 of the record, line nine. I am recorded as saying:

"But I say this: They are admissible for the matters set forth therein". There should be a "not" in there, so it would read, "they

5554 are not admissible for matters set forth therein".

The Master: I don't know whether any of you gentlemen have any discussion further that would help us. I have been thinking a good deal about this.

Mr. O'Brien: I would like to be heard on this.

The Master: Go ahead.

Mr. Ransom: I would like to be heard.

The Master: I don't think you need to be heard. Unless Mr. O'Brien says something that changes my views, I am inclined to let
5555 these books in, in the language of the Court, for what they are worth.

Mr. O'Brien: Can't you appreciate the fact that we are going immediately to meet the obstacle of having presented here schedules that are drawn out of these books? We are building a house of cards, that is all. However, I wanted to be heard.

The Master: Let me finish what I was going to say. I anticipate of course, as you do, that following the reception of these books in evidence, counsel for complainant will probably call an accountant or somebody with his tabulations. I want to see what is going to hap-
5556 pen. The way my mind runs is this: This accountant may testify that he has made up the account from these books and from the supporting vouchers.

Mr. O'Brien: Then he would have to bring them in.

The Master: And then it might come clearly within the rule that Col. Hayward has indicated, a rule that I can recognize, namely a tabulation from papers. If I allow them in

there is nothing to prevent counsel at any time moving to strike them out. If I strike them out they will be precisely as if I had not allowed them in. They will not be an exhibit in the case, and the testimony resting on them will fall, and if the case is not complete the whole case will fall. I do not think any harm can come from leaving them in. 5557

Mr. Hayward: If your Honor please, I did not quite finish last night. You ran off to the steamboat, and you cut me right off at the shoelaces.

I want to say this, with all respect to you, I was called out on the telephone yesterday, and I find in the record a statement that I read here. I don't know whether it is right or not, but it is on page 1839: 5558

"If I refuse to take them, and I put him to the necessity of bringing all these people and all these records, and we spend three months on that branch of the case, and Judge Ransom is right in his statement that his client is losing many thousands of dollars a day, I am doing him a pretty serious injury if I am wrong in that ruling. Isn't it my duty as a Master to support Judge Ransom, and let him suffer if he has led me into an error?" 5559

Now, that is not the way to try a law suit if the Master please, and I protest against it and object to it. I say this with all respect. I say that the Consolidated Gas Company is not losing a nickle a day. Now, put that in the record as Hayward's statement. I have just as much right to make that statement, unsupported by testimony, unsupported by anything

except wind and bluff and hot air, as Judge Ransom has, and I have not gone into the newspapers purporting to have said that in part when as a matter of fact I did not make that statement. That statement was made in the newspapers by the publicity agent, and yet your Honor keeps referring to his statement that he is losing thousands of dollars a day.

The Master: I referred to his claim.

Mr. Chambers: We deny it as a matter of law.

Mr. Hayward: You have no right to presume that it is so because he says it is so.

The Master: I do not assume it at all. I simply referred to his claim as bearing upon the practical results of an error either way.

Mr. Hayward: Yes, and you have no right as the Master and as the umpire in this case to let in testimony, to let in books that you know in the bottom of your heart are not admissible by any rule of evidence, simply because if it is error he is going to be the one to suffer from it, because you must have it clearly defined in your mind, just as you said here in this very clear statement, you may have it very clearly in your mind, that if it is not material and should not have been admitted the Supreme Court of the United States or somebody else is going to find it out and throw it out, and therefore we will not be injured. That is obvious from what you say.

The Master: Yes.

Mr. Hayward: Now, let me call your Honor's attention to the fact that that is not a fair, square way to look at this case. If it is right that these books should go in they should go

in for all purposes, whether it hurts us, or 5563
hurts Mr. Ransom or anybody else, they should stand on their own bottom, without this side-show and these extraneous considerations. If they should not go in, then we are harmed, even though the Court should say they ought not to have been admitted by the Master. They are not going to throw them out, and all the tabulations, and all the subsequent testimony that follows. If you want to make a breach in our wall, we will suffer irreparable injury in this case, and our clients will suffer that which you cannot repay. We will be irreparably injured, and you know the way the courts 5564
review these cases, they are going to take your findings, they are not going back through the minutæ of this record.

The Master: They did it in the first case. I read that opinion the other day. If you will read that opinion again you will see that the United States Supreme Court apparently went into that record pretty carefully, and practically said that they did not agree with some of the findings of the Master, that in some respects they did not agree with his conclusions at all.

Mr. Hayward: But, if the Master please, 5565
you haven't got a right to consider, in my opinion—I do not mean to lecture you or tell you what your duties are, but I am trying to direct your attention——

The Master: I know that, and I know your point, too.

Mr. Hayward: I don't think you have got a right to let the enemy inside of our walls, if we have got a right to keep him out. You

5566 should not break down our defense simply because we may lick them anyhow when they get inside our fort. We are entitled to this protection.

The Master: I agree with your argument and in reaching a conclusion I have not done it upon the basis referred to by you.

Mr. Hayward: Referred to by yourself.

The Master (continuing): Yesterday, which was in the nature of a discussion as to the danger of making a mistake. Now, I do not think I am making a mistake, but I appreciate the fact that I may be doing it. I may
5567 make a mistake either way I decide. The fact that Judge Ransom argues so earnestly for one proposition, and you argue so earnestly for another, puts me in a position where, not like some judges whom you and I have met, I set up my judgment as being infallible, and say that when I have reached a conclusion, I am dead right about it. I appreciate, as you must appreciate, that I hesitate to reach a conclusion, because I am afraid I may be wrong whichever way I may decide. Now, that being so, what I said yesterday was simply in the way of an observation as to
5568 where the greatest danger lies, not that it was affecting my ultimate judgment on the matter. My judgment is this, subject again to what might still be said about it, my mind is open on these things, as I try to keep it, that there has been a development of the law in the light of questions of this kind. At one time yesterday I rather felt that it might not be a burdensome matter to make them bring down some of these records.

Mr. Hayward: You don't think that the 5569
offer of these books is along the line of the new development of the law that you talk about those tabulations, do you?

The Master: I do.

Mr. Hayward: Made for the purpose of those trials?

The Master: I do. I am inclined to believe, and it is my judgment with the development of the law with reference to a contemplated, not so necessarily technical, but as a complicated accounting proposition, their books of original entry are something different than you and I have understood them to be. 5570

Mr. Hayward: I think that may be true.

The Master: Now, I am trying to say that this may be going a shade further than any of the cases referred to by Judge Ransom. Here is the picture that is in my mind.

Mr. O'Brien: You are making new law, your Honor.

Mr. Hayward: It is not going a shade further now. I don't agree with you. If you are going to take it, how far you are going, it is not really going so far, but it is going in an absolutely diametrically opposite direction and for a diametrically opposite reason. It is 5571
plain to see in this Northern Pacific case, it is plain to see how they made that evidence admissible. It is plain to see why they gave credit to it. It is plain to see how they surrounded it in that case with all the safeguards that the rules of evidence have ordinarily surrounded books of evidence, but they did not let them bring these kind of books in there. They were simply abbreviations, checked up and

5572 safeguarded, of what would have been a great quantity and complication of evidence to us. But this, I am trying to get the Master to see, is an entirely different thing, it is a horse of another color. This is not a tabulation. You don't think this is a tabulation, do you?

The Master: No.

Mr. Hayward: You don't think it is a summary, do you?

The Master: No.

Mr. Hayward: You don't think it was made under the personal supervision of a head of a department?

5573 The Master: Yes.

Mr. Hayward: No, it was not.

The Master: Yes, I think it was.

Mr. Hayward: I don't. I think you are dead wrong.

Mr. O'Brien: There is no argument in the world. You can't even get the color of a right under any decision cited here or that is citable, that would have justified the admission of such a book as that journal, and I say, your Honor——

The Master: Now, Mr. O'Brien, please. Colonel has the floor, and I am going to let Colonel Hayward finish his argument.

5574 Mr. Hayward: That means Judge Ransom too, doesn't it?

The Master: Yes, I will try to get Judge Ransom in a minute. Judge Ransom will have to take his seat. You gentlemen will have to keep their statements until Colonel Hayward is finished with his statement. Then I am going to recognize Mr. O'Brien.

Mr. Hayward: Now, I would like to go on on

that point. Taking up the next thought, obvi- 5575
ously the Court in this case that has been cited relied upon, and show to your Honor that none of these safeguards exist in the offer as it is made here. Isn't that clear to the Master?

The Master: I have got your point clear, but I do not agree with you.

Mr. Hayward: Now, once it gets past the threshold of a case, you know how hard it is to get it out.

The Master: Not hard with me.

Mr. Hayward: Well, you know how hard it is for a Court, a reviewing Court to keep from being unconsciously swayed by things 5576
that are in the record, that are a part of the general picture that flesh the skeleton, as it were. You cannot undo, if the Master please, if you deprive us of a right here, which I think it clear and absolute, you can never undo it, you can never undo the hurt you have done us, you can never undo the hurt that you have done these public departments that are here defending this case in perfect good faith; and for your own sake you don't want anything on this record that will be criticised by any of the courts above.

The Master: Of course, I don't. I want to 5577
be right if I can.

Mr. Hayward: Of course, you do, and you don't have to depart from the rules of evidence, you don't have to depart from these cases. As you said, you think it is going a little further than any of these cases. Why did you do that?

The Master: Because I think the principle is the same.

Mr. Hayward: Don't you think it would be

5578 a little presumptuous to us, sitting here, to extend the law——

The Master: I think the point is the same. If the principle is the same, the fact that no court has gone quite so far in a particular item, does not make me hesitate to apply the principle if I have got the principle.

Mr. Hayward: I know, but this is in a different direction, and the very thing that made that evidence admissible in that case, and the very reason for the extension of the rule, is absent and lacking in this offer here. Don't you think, to be perfectly fair and frank
5579 about it, if the Master please, it would be safer for yourself and safer for this Company and safer for the defendant, and that is what we are all here for, is to make a decent, clean record with which everybody will be satisfied, to follow that case? Judge Ransom can make up these tabulations. They will be intelligible to me; they always have been when they are made by intelligent men. I say those books are not intelligible to me; I cannot make head nor tail out of them, and I do not think anybody else can with any degree of reliability. It is not as if you were throwing him out into the street
5580 or denying him the proof of any facts he wants to prove in this case. But would it not be safer and fairer to make him follow that case? He can do it. It won't take him much more time, and it will give us a clear perception of what he wants to prove. Why take any chance when it is not necessary? He can go and get these tabulations, start to bring them in here tomorrow morning if he wanted to. It may take the time of some clerks, but a corporation

that can lose ten thousand dollars a day can 5581
easily afford to do this.

Mr. Chambers: It may be they have them already.

Mr. Hayward: I venture the assertion, if the Master please, that if the Master confine Judge Ransom to the method, the modern method he has called it, prescribed in those cases set out, with the safeguards that are surrounding that method of proof and which it seems to me perfectly clear is the reason for allowing them, that Judge Ransom will begin to hand us tabulations in this court room tomorrow morning at ten oclock, and I will wager anything they 5582
have got them now.

Why, simply to oblige this man, should we break down or should you break down what seems to be our clear rights in this case? I do not ask that you prevent him from proving his case. I ask to have it done in an orderly way. He can do it in the way the Court sets out. He can bring the tabulations. He has the heads of the departments to supervise the work, and might just bring three or four of them, that will be all that is necessary, to take the witness stand and testify that they were compiled by them and correctly compiled by 5583
them, and all that. Why the strange departure from the thing that is orderly, that is sane, that is fair, safe and usual? I do not ask you to foreclose his rights at all, but simply to compel him to follow the cases that he himself has brought before your Honor. And I won't make any objection to them, except the right to check them up if he does it in accordance with that Northern Pacific case. If I ever heard a more

5584 fairer proposition than that made in a court-room—well, the Master never did either.

The Master: We will hear Mr. OBrien now. I will try to glance at your memorandum while you are talking, Mr. O'Brien.

Mr. O'Brien: Your Honor, the citations, or some of them, you already had called to your attention in the memorandum submitted by various counsel, and the rulings in this State you are very likely familiar with—the principles enunciated in that Second Avenue case. The proposition is so clear that I am very much distressed since yesterday afternoon.

5585 You indicated that you were inclined to let these books in. I had taken a great deal of encouragement out of the attitude you had shown during the course of the discussion in the afternoon and the presentation of testimony. I had taken the encouragement out of it because it inspired the hope that when we got through with this very important case—perhaps, as I said yesterday, the most important that will be tried in our generation—we would have a record that everybody would be proud of and a record that we would feel represented the whole truth and nothing but

5586 the truth, and in accordance with the rules of evidence.

Getting away from the discussion of the legal phases of it, and to consider some of the particularly concrete facts connected with this particular set of books, the analysis of the books puts them clean beyond the application of any rule. I call to your Honor's attention that these cases, the leading cases on this subject, are cases where the battle was held, the con-

troversy was worked out, on books that were 5587
made immediately or concurrently with the facts recorded, that were the first entries made, and even there the courts required the presence of the entrants who made the entries and have required a quantum and quality of evidence that you have not even a semblance of in this case.

I want to put my position before the Court and before counsel for the complainant so we will not be misunderstood. They may have the idea—Mr. Carter had murmured a statement here a minute ago that it was nothing but delay —that someone wants to shut this company 5588
out from a fair hearing. Now, he knows that is farthest from the thoughts of the defendants. There is a variety of viewpoints represented, fortunately for everybody concerned, in the people representing the defendants, in the offices there, and the make-up of the defense lined up here is such as to guarantee every possible protection in fair play, in justice and in consideration throughout this case. I want to say to your Honor that all that the defendants want is to have the story told here if there was money spent, if there was a business transacted —to know how it was transacted, to have these
figures verified, and where records have come 5589
in from the underlying sources of information into the main office and then they have been unscrambled and set apart into the various accounts, to have that shown in a sufficiently reasonable way as to carry with it conviction. So that when we get through this case we can say as to the accounts we know they are correct; so that we can say we have stripped

5590 it to the marrow and we have done it with consideration to the complainant and to the rights they say are involved in this case.

Even from the viewpoint of trying to save time for the complainant, they are not going to save time, your Honor. If these books are to be admitted in evidence you are going to be met with the schedules that have been passed around to the defendants' representatives, and there are the references by page to those books. You are not going to have references to the underlying data, they are not going to trace the payroll down to the clerk, we are not going

5591 to have a chance to find out whether the system is a reliable system or not.

The Master: How do you know?

Mr. O'Brien: How do I know it?

The Master: Yes.

Mr. O'Brien: Why, they won't produce them.

The Master: How do you know they won't?

Mr. O'Brien: They won't produce the underlying data. I am assuming that.

The Master: But you have not any right to assume that.

Mr. O'Brien: I have a right to assume that because they have presented schedules and

5592 have references to the ledger.

The Master: You have no right to assume what use I will let them make of these books.

Mr. O'Brien: I do not know what is in your Honor's mind, but I will tell you what is in mine.

The Master: I will tell you what is in my mind. I am not going to give them a report that it costs them more to make gas than they

are permitted to charge for it unless they prove 5593
it beyond a fair and reasonable doubt. I am going to hold them to that book. That is what is in my mind. And I am not going to have it in a careless haphazard way.

Mr. O'Brien: If you say they will be required to produce the underlying data, that only strengthens the argument I am making, that they might as well produce it now and have those books substantiated, as to put us to the trouble and time consumed in examining the experts who come, to find out whether their sources of information are correct.

The Master: You won't have that burden in 5594
my judgment. I am going to say now that my present disposition is that if an expert called with a tabulation of figures has based of his tabulation purely and solely on the figures appearing in these books, I am inclined not to receive it.

Mr. O'Brien: Well, that certainly sounds good, your Honor, but let me run along and finish the thoughts that are in my mind as quickly as I can.

The Master: I really think you gentlemen are placing entirely too much importance on this ruling.

Mr. O'Brien: No, your Honor, I want to say 5595
to you, and I do not say it with any acrimony or any heat, but out of calm deliberation, that there is danger in the move of admitting these books. As I said before, if I was counsel for the complainant in this case in the year 1919, representing one of the most powerful corporations in the United States, seeking to certify the voice of the people as expressed in a state

5596 statute, I would come into this court and strip these records to the marrow, so there would be not even the smallest semblance of doubt as to the truth of the facts brought forth, and in doing that I would find a way to do it expeditiously. I would produce a manager from a branch office; I would produce a superintendent of a plant; I would produce the bookkeepers who kept these records—and there were not many of them,—and they would come in here, and then I would submit the matter to the good judgment of the Master, feeling that he would use reasonable discretion in keep-
5597 ing the cross-examination within reasonable bounds.

I would do that because of the compelling need, your Honor, of having a conclusion here that as to the facts cannot be questioned; that is what they ought to look to. Why this matter of making a precedent here of admitting that journal, with every page of the figures taken from another source, but with a dis-scrambling of the figures into a thousand odd accounts, taking billions of dollars and throwing some into one account, some into another account, some into a third account and taking doubtful
5598 items, for which they cannot find a resting place in the books, and shooting them off into the columns of some miscellaneous accounts? Your Honor, they won't bear analysis. That journal cannot come in under any claim of right in this case, and if it comes in, it has to come in with the underlying data from which those entries were taken.

The Master: I have expressed my notion about a journal several times, so I won't re-

peat it again. The only reason I leave the 5599
journal in is that it is a method of connecting up the items in the ledger with items in other books. The only reason I leave them is as a sort of connecting link or identification of the items in the ledger. It frequently refers to folios in the journal, which in turn refer to other books, and I am simply leaving them in as a connecting link, insofar as they connect items in the ledger with other books like the cash book. I am not going to take them as evidence of allocations of any items, as you put it; I won't do it.

Mr. O'Brien: But you see, your Honor, and 5600
the quantum of proof required by the rule is not here, we will have a case that may cost the company a million dollars, and the officers of the company quite a sum of money; we will have that going back, as all the late rate cases have. The latest one went back, and then went back a second time, not because of inadequacy of proof, as much as for other reasons. That is the record of rate cases. That is the record of the 15 to 20 principal rate cases, that made some law, and every one of them went back without any relief being granted to the complainant company, and all that money was 5601
wasted.

There is one thing I want to impress upon your Honor. There is only one rule that ought to control, and that is the rule of good law—whether it bears heavily upon one side or the other. Here are books it would take millions of dollars to take up on appeal. How are they going to be embodied in a case on appeal? They might be certified in.

5602 The Master: Let me ask you what you mean on page 15 of your memorandum, referring to the Massachusetts case. You say this: "In this case the records of the Massachusetts General Hospital were properly excluded. The defendant insisted that the records of the Hospital were admissible under the common law. The records were not made in accordance with a requirement of law, and therefore were not legal records within the meaning of the rule that legal records or copies thereof are generally admissible." Do I understand you to admit that records kept in accordance with a
5603 requirement of law are admissible?

Mr. O'Brien: No, I do not mean that. I do not understand the reflection made on that case.

The Master: That rule does not apply here.

Mr. O'Brien: No, as I said to your Honor, we battled on that point before Judge Greenbaum, where the Public Service Commission were on the other side of the case and where they sought to have put in their records under the Code provision, and they were kept out. The fact that someone has made a sworn statement—of course I do not think there is any
5604 need of arguing it—made a sworn statement under the law, and I am familiar with the rules or presumptions applying to public officials, to public documents, but they are applicable not in a case of this character. The rule that the public official is presumed to do his duty, and that if a report is required to be filed a corporation is presumed to have filed it——

The Master: You say on page 18, "These books are not kept under authority of law."

Is that entirely accurate? Are these books kept under authority of law? 5605

Mr. O'Brien: Under authority of law?

The Master: Yes.

Mr. O'Brien: No.

The Master: They are kept under the direction of the commission having power.

Mr. O'Brien: That is only so when they put in a report they will know how to investigate the report and check it up, and for the purpose of gathering statistical data to compare one company with another.

The Master: Can we limit the purpose for which a statute requires books to be kept? 5606

Mr. O'Brien: We certainly can. We read the statute.

The Master: If they are kept in accordance with and in pursuance of a legal direction, I imagine they must be accepted as such.

Mr. O'Brien: Oh, no, your Honor, that would not make them admissible here, and if we were coming in here today, and the Astoria, for instance, was not a part or affiliated with this company, and we wanted to use the manufacturing results of the Astoria Company to prove that gas could be made for a certain price, your Honor would not receive that as any evidence, 5607 even though it was a sworn statement made in a report and kept in accordance with law. You would say as Judge Greenbaum said, "I am not going to try two rate cases". That is not admissible here. It is not admissible under the common-law or the provision of the Code as to documents kept in accordance with law.

Mr. O'Brien: But let me go back to the practical side of the case, and that is this: As I

5608 suggested to you yesterday, the journal of course absolutely cannot be argued upon, and these other records, there is nobody to vouch for their accuracy, there is nobody to vouch the allocations of the various accounts. These records do not come up, and these items recorded do not come up from the branch offices and the works' offices, do not find their way into the ledger into the original form in which they were kept. We are not dealing here, your Honor, with the situation that obtained in many of the cases that have been cited where the books are before your Honor that were
5609 made at the time of the transactions, the first entries made, the original entries; but we are dealing with books that are kept in a clearing house, and where the record is sometimes the sixth or eighth or may be the tenth record of the item recorded, and in many instances, in a great many, as your Honor will see, the original amount that is carried up from the original record is not put in the books, but is put into the scrambling department, the journal, and then afterwards separated into various subordinate amounts and put into the ledger, so that it is carried away from any of the cases that have been cited.

5610 Now, on the practical side of it, I think your Honor cannot stretch the rule, it would be an irreparable harm to stretch it, the city has not the money, the state has not he money, the legislature is not in session to appropriate money, and Mr. Chambers has told you frankly and candidly his position. That irreparable harm should not be incurred, the city and the state should not be put in that position, of being

compelled to go out and assume the burden in 5611
this case of hiring accountants to go over these books. That is the hope of the other side. They know how fallible this is, but they think before the case is over the defendant will supply the defect, that the defendant will come in and put in certain kinds of proof that would carry off the defects of permitting these books to go in.

Now, I suggest to your Honor what I did yesterday is the proper course, and that is to have the underlying books properly identified. Bales of paper need not frighten the Court. Very likely as we go along we may find some- 5612
thing that is full of errors. On the other hand the proof may be such that with a fine toothed comb and a microscope it will be impossible to find any error; and if that be the situation conviction will go with it, and the plaintiff will be benefitted by it, and your Honor will always have in his hand the discretion to exercise so that the cross-examination may not extend to unreasonable length, causing a delay that has no compensation for either side in the case. That is the position I would have your Honor take, and that is the position I would have the complainant take in this case, so that the issues in this case may be so tried that when the 5613
Master has made his findings they may carry with them absolute conviction, and not leave a semblance of a doubt in a matter of this kind that so vitally affects the people.

The Master: Mr. O'Brien, don't you see that the minute they close with a record that leaves a doubt on any fact necessary to the decision of this case, I am not going to find that fact for them?

5614 Mr. O'Brien: Well, your Honor, I don't know the line——

The Master: I don't either, and I don't care.

Mr. O'Brien: I don't know what their procedure is.

The Master: I am not going to give them a finding that it cost them a certain amount for coal, that it cost them a certain amount for oil, that it cost them a certain amount per thousand cubic feet to make gas, or that it costs them a certain amount per thousand cubic feet to distribute the gas. If there is any doubt at all about the finding that they ask I am not going to let a report go to the United
5615 States Supreme Court that they can say, as they did in the first case, that there is a doubt about it. That is their burden. To illustrate my point, as I think I have done before: If they were to rest their case now, and if they were to ask me to make a finding that the receipts and disbursements for the year 1918 in the manufacture of gas amounted to x dollars, I should decline to find it, because I have some doubt about it as the record now stands. That is the test of whether any harm is done. The test is as to what the ultimate result will be. I will not make a finding for either side
5616 on which I have any doubt, or as to which the record is in doubt.

Mr. O'Brien: Why not, just as we go along, be sure we are right? You cannot get any justification for these ledgers. Take, as I say, the various accounts, take these loans to other gas companies, take the several suspense accounts that carry with them a lot of doubt.

The Master: You want to have this in mind,

too, Mr. O'Brien. You and I have seen it in the 5617
trial of cases many times and I have no doubt you and I appreciate the distinction. There is a tremendous distinction between the trial of a jury case and the trial of an equity suit. In a jury case I concede it to be the duty of the Judge to keep from the jury matters that might influence them improperly. It is a dangerous thing in the trial of a jury case to permit anything to go in on a promise to connect, or upon the theory, "We will see what happens." It is bad, because jurors get an impression as the evidence goes in, they would have a tendency to take these books as they 5618
stand. Now, that situation does not exist in the trial of an equity case. That is the distinction, and in the trial of an equity case I think the Judge should take practically everything that is offered, and then thresh it out, and take such parts of it as have probative force, making his findings upon those facts that are proved without doubt, and to his satisfaction, and particularly in a rate case like this, where he is not even called upon delicately to poise or balance the proof.

The Master: As I concede his duty in a case like this, does not weigh the evidence with the 5619
probabilities on one side of the scale or the other, he is to see that he has proof before him that will justify a finding without any doubt on his part, or without any human reasonable doubt as to just what the fact is. In other words, they probably will want me to find as a fact that it cost them x cents, or x dollars to manufacture gas, per cubic foot, during a year, or two years, or an average,

5620 whatever it may be. Now, I will not find it unless they prove it, and they will be foolish to ask me to do so, because if a record like that goes to the United States Supreme Court, and I make a finding that is vulnerable, as apparently some of the findings made by the Master in the previous case were, the Supreme Court will say, "We cannot take those findings, they are not free from doubt." I will not send up a finding like that.

Mr. O'Brien: Your Honor will bear in mind that almost every one of these rate cases that have gone to the United States Supreme
5621 Court have been miscarriages.

The Master: Yes, and I will try to see that this will not be.

Mr. O'Brien: To the extent that they are sent back for one cause or another.

The Master: I would very much rather err on the side of refusing relief to this complainant than to err on the side of giving them relief as to which there might be any doubt and then have the Supreme Court send it back and say, "There is too much doubt about some of these figures." I am not going to make any report that will result in a finding, "Well, I think it costs them one-half of one
5622 per cent more to make the gas than they are entitled to"——

Mr. O'Brien: Your Honor will appreciate the position I am taking. Ordinarily an attorney might sit down and say, "Well, we can try out this case one way or another; we can insist on one hundred per cent of the facts, get all the proof from every possible source in this case, so we will know the facts, and the

conclusions reached will be properly drawn." 5623
The other attitude might be that we would simply sit down here and not care for the truth, by our acquiescence or our apathy, or indifference, and just let the complainant put in whatever he wants over our objection, and have a lot of objections in the case that we could take advantage of on appeal in order to bear them in the end. Now, that is not fair to anybody.

The Master: That would be the wrong attitude, and it would not do any good, because in spite of rulings that you might think were technically wrong, the proof might be so clear 5624
that the Supreme Court might say, "Yes, there may have been a technical error there, but the proof is so overwhelmingly clear that we will say it was not a material error."

Mr. O'Brien: It may be. But your Honor please, we should have a full opportunity to cross-examine.

The Master: And I intend that you shall have it.

Mr. O'Brien: And if the proposition is true that they are losing fourteen thousand dollars a day, the sooner it is proven the better, but have it proved, have it proved by proof that 5625
nobody can assail, and that is the position we have got to take, and that is the position we want to take.

Mr. Ransom: We have been waiting for days to do it.

Mr. O'Brien: Now, I say to your Honor, that there won't be time lost even. I say to your Honor that the time that they think they are going to save by having these books brought

5626 in without the underlying data, will be lost to them in this case, that we will be compelled to go into cross-examination when schedules are put in, in order to get that underlying data, in order to be sure that such schedules are correct. Now, that time will be more than the time that would be taken up in verifying the data that is in these books by having here the men who made the original entries and have some proper showing made as to their reliability.

The Master: Well, that is a penalty they will have to suffer for their method of presenta-
5627 tion. You and I cannot control their method of presentation. As I have watched this case go in, it has occurred to me I might do it different. I might do it differently. I might do it differently. The big question here is, How much does it cost to make gas. It seems to me that if I were trying the case, but I am not the man who is trying the case, I am listening to it and trying to get the facts and guide the introduction—I may be all wrong about what I am going to say, I may not know the conditions, but it seems to me if I were presenting the case for the complainant, I would first
5628 start out to say that to make gas it requires coal, gas oil, and certain other ingredients and labor and I should call the witnesses to prove how much coal and how much gas oil and how much other things it takes to make a thousand feet of gas. I should prove how much labor was required, how much time was required, and that I should think would give the Master a pretty quick and complete picture as to just what he had to get into. Now, that is the way I would probably do it, and yet if I had the

burden of presenting this case for the com- 5629
plainant, under the difficulties that they may have that I don't know anything about it, I might do it just their way. That is why I say you and I can't say how the case should be tried. I am assuming Judge Ransom is trying it the way he thinks it should be tried.

Mr. O'Brien: Let me say here, and that is along the line of danger and that is along the line of what I have said several times today, and I say it every time as a hundred per cent. American citizen, this is one of the biggest corporations in the world, it is vital to a great many people in the Metropolis, the greatest 5630
metropolis of the world, people are looking on and all that. Now, we have books here that represent in figures—

The Master: (Interrupting) May I interrupt you, Mr. O'Brien?

Mr. O'Brien: Yes.

The Master: Do you agree with me, in my general proposition, that that is the way I have got to find out how much it costs to make gas, find out what goes into it, how much it takes; is that right?

Mr. O'Brien: Yes.

The Master: Now, I am going to get that 5631
before this case is through, and if I have any power to direct the mode of putting in the proof, sooner or later, I will insist on getting that very thing, because I won't guess at how much it costs to make gas. I have had experience enough to know that I can prove in a very simple way how much it costs to make a suit of clothes or a pair of shoes or any other article, and it ought to be just as simple

5632 to show how much it costs to make a thousand feet of gas, and I am going to find that out.

Mr. O'Brien: That is what Judge Greenbaum said. He said he did not want this array. He said, Bring in your books, you spent money, you paid for coal, you paid for oil, and you paid for labor, bring in the checks and show that you paid it in a simple form; and they were compelled to do it.

The Master: I don't agree with Judge Greenbaum there. I don't care whether they have paid their bills or not. I don't care any-
5633 thing about it. The State of New York says in furnishing gas to the People of New York, you must not charge more than 80 cents per thousand cubic feet. To make gas, you need certain things. I don't care whether they pay their bills or owe everybody in the world. I want to know how much it costs to make gas and that is what I will find out before I am through with this case.

Mr. O'Brien: That is another way of expressing what was in his mind. Your Honor, what I was just about to say when you interpolated the last remark was this, the danger of fitting
5634 a rule, having a rule stretched to take in these books——

The Master: I don't see any danger in it.

Mr. O'Brien: Here you have got, even though it did not vitally affect the case, your Honor should not do it, and I will tell you why. We have here a great powerful corporation, it has affiliated corporations—affiliated corporations. In the average mind of the public, the average mind as we see it from day to day, and hear

men talk, where there is a complexity of cor- 5635
porations and holding companies, there is a strong conviction that that is always for some diabolical purpose.

The Master: I don't care an iota about their intercorporate relations, it don't affect the cost of manufacturing gas.

Mr. O'Brien: No, your Honor, but your Honor has seen——

The Master: There is in the record now reference to the fact that they buy gas from the New Amsterdam Company at forty odd cents, and from some other company for some forty odd cents, and from another company for sixty 5636
odd cents. Now, those companies charge the Consolidated upon the cost of manufacture. The Astoria plus 7 per cent. on what they call invested capital, and the other company plus 10 per cent. of the cost of manufacture. Now, in order to arrive at that cost of manufacture they have got to show, the Consolidated Gas, how much it costs. The Consolidated Gas Company in order to have the courts interfere with the legislative enactment that they must charge not more than eighty cents, have got to show what it costs to manufacture gas. Now, I am not going to decide this case until they show, 5637
and I am not going to make a finding until they show it. What I am going to get into the record before I get through is this, how much coal does it take to operate a plant for a day or a week; how much oil does it take to manufacture a thousand or a million cubic feet of gas; what other ingredients go into it. I am leaving out now all overhead and other items. How much time does it take to make it; what

5638 help do you need to make it; how many men do you have to have; how much do you have to pay those men; how much have you paid them. And when I find that, taking the unit of a thousand or a million cubic feet, if it takes a week to make it, that it takes so many men at the machine to make it and takes so much oil and so much coal to operate the plant, I can immediately figure up the various items as simple as you and I are discussing it, divided by the unit of a thousand or a million, and I will know how much it takes to make the gas that goes into the holder. And now, when it
5639 comes to distribution of gas, if that is an element they are entitled to have, that I am not familiar with at this time, I am going to get at it in the same way. I think there is entirely too much mystery around the trial of a law suit in arriving at a fact. Facts are usually perfectly simple, except negligence suits, an accident or personal injury case, falling off the car, when the people saw the fellow with his foot on the step, and the others say they saw him thrown into the street. But how much it costs to make a thing we can find out.

Mr. Hayward: I don't understand what the
5640 Master said about his attitude toward the other companies, the Astoria and so on.

The Master: I simply said that there was a reference in the case to the fact that other companies charged 40 cents, or claimed it cost them plus the 10 per cent. 40 odd cents. Now, they must base that cost on something in the manner I have described, and I will find out how it is done.

Mr. Chambers: May I say a word?

The Master: No, I am not going to hear any more discussion. 5641

Mr. O'Brien: What I had in mind when I referred to the intercorporate relations with these affiliated companies, the relations between these companies are expressed in some way in these books. That way has not been explained. The little chart, the penciled chart drawn yesterday——

The Master: (Interrupting.) Does it make any difference to us, Mr. O'Brien?

Mr. O'Brien: What?

The Master: As to what their relations are between these various companies, on the cost of producing gas by the Consolidated Gas Company. 5642

Mr. O'Brien: You have got to know that the figures are correct as to——

The Master: (Interrupting.) But listen to me, Mr. O'Brien, will you?

Mr. O'Brien: You see how the debits and credits were obtained yesterday as shown by Brundage?

The Master: Get my point, will you? Does it make any difference to you or me what the intercorporate relations are between the gas companies if as a matter of fact it costs them and they cannot show that it costs them any more to make gas, taking the market cost or real value of coal and oil and labor, say, 40 cents, to give them, I assume a fair margin of profit, does it make any difference what intercorporate relations they have? 5643

Mr. O'Brien: Yes.

The Master: How does it change the price of the oil?

5644 Mr. O'Brien: It may. Where they are buying and selling gas, that is a situation which exists——

The Master: Does it change the price of oil that they have to buy?

Mr. O'Brien: The price that who has to pay?

The Master: Any gas company in New York.

Mr. O'Brien: Well, no.

The Master: Does it change the price of coal?

Mr. O'Brien: No. The big factors, coal and oil, won't be changed except as you have got to know, as you have got to have proven to you beyond a reasonable doubt that the price they
5645 pay for gas represents a reasonable price, and that necessarily——

The Master: (Interrupting) What they pay for gas?

Mr. O'Brien: Yes, sir; and that necessarily takes in the Astoria Gas Company's operations here, absolutely, your Honor.

The Master: Well, I am not going to pass on it.

Mr. O'Brien: Well, they have got to do it.

The Master: Well, I will not pass on that at this moment.

Mr. O'Brien: Where they control these com-
5646 panies, they have got to get right into their plant and they have got to try four or five rate cases at one time.

The Master: We have got the Astoria Gas Company, we have got the New Amsterdam Gas Company, the Mutual and the Standard and the Westchester and the Kings and a dozen gas companies around New York. Suppose proof is brought in here that it takes a hundred gallons of oil to make a thousand cubic feet

of gas, this proportion may be perfectly silly, 5647
I have no idea what amount, and suppose it costs one hundred dollars, and suppose the proof is beyond question that any one of these gas companies, I don't care which one it is, require ten tons of coal to make a thousand cubic feet of gas, and that costs one hundred dollars; and I don't care which company it is; and suppose we find as a fact beyond question that any one of these companies to make a thousand feet of gas needs the service of ten men costing them fifty dollars, we have got, taking those three elements, we will say, a thousand dollars of material and labor to make 5648
a thousand cubic feet of gas.

Mr. O'Brien: Is your Honor figuring out now in your mind a hypothetical case?

The Master: Absolutely hypothetical.

Mr. O'Brien: You are figuring out that you could call experts to say, Never mind the plant at Fourteenth Street, never mind the plant at Forty-second Street, never mind the Astoria plant, I can tell you as a matter of expert testimony that you have got to have so many men, so much coal, so much gas, so much oil, so much incidentals to make it.

The Master: Yes. 5649

Mr. O'Brien: Well, they will never prove their case that way.

The Master: I know, but wait a minute. The point I am trying to make is not how they are going to prove it. I am trying to discuss with you the question of intercorporate relations. I am assuming now that in some manner or in some form they have competent, proper reliable proof before the Master that

5650 whether it is one company or another, whether it has a big plant or a small plant, whether it does it one way or another, it requires oil and other material and labor to make a thousand cubic feet of gas. Whether it is done by the Standard or the Mutual or any other. Suppose the proof is that it costs a thousand dollars for material and labor, whether it is in one plant or another, to make a thousand cubic feet of gas, isn't the proof absolutely that it costs in the City of New York and in the vicinity of New York a dollar a thousand to make gas? And what possible difference does
5651 it make whether this company owns the stock of another, or whether the gas goes in or out, or whether the mains run up or down, if as a matter of fact the material and labor to make gas by any one of them is a dollar a thousand.

Mr. Ransom: May I say a word?

The Master: No, let Mr. O'Brien finish.

Mr. Ransom: I think it is very inadvisable to pass on the various matters in this case in this way, just by casual conversations continued over a long period of time.

The Master: It is not casual, Mr. Ransom.

Mr. Ransom: I wish to make an objection on the record, if I may.

5652 The Master: You may make an objection, if you want to. What do you object to?

Mr. Ransom: I object to the course which is being followed with respect to the argument of this question. An adjournment was taken of four days for an examination of the question of law. Now, for three days more there has been this continuous matter of discussion, the expression of opinion on many matters which are closely passed upon here. Counsel for the

defendants, the three of them, have so far 5653
occupied about twenty times more time than counsel for the complainant, and we are——

The Master: They have a twenty times harder burden.

Mr. Ransom: No, the burden is on the complainant.

The Master: You have offered books, and I have indicated that I am inclined to receive them, and they have the burden of trying to change my mind, which is twenty times harder than for you to keep my mind where it is. I am not going to let Mr. O'Brien continue much longer. 5654

Mr. O'Brien: Let me say this now, and I won't be but a minute with reference to just what you would say. I don't know whether that forecasts the method of proving this case, but it will be certainly futile for them, or their method, because of this: I judge that the hypothetical situation was that it might be shown by the operations of 21st Street and 99th Street that it cost 53 or 55 cents to make gas, and put it in the holder, and that therefore if they only paid the other companies 40 cents for what they bought from them, there isn't any need of their going into the question 5655
as to how much it cost the other companies, because they are paying far less than what it cost them to make it themselves. Why, your Honor, for ought we might know, they might be paying the other companies only 29 cents. There is the point.

The Master: We will have to find out about that, and it must be perfectly apparent now that the minute they show me it costs 51

5656 cents to make gas in one of their plants, I have the inquiry in my mind where does it cost you more than some other companies. That must be perfectly apparent to you.

Mr. O'Brien: Not only that, but—well, I won't go into it, but let me say this in conclusion, your Honor: Speaking about—I began to speak about the corporate relations of the complainant, but with reference to these books of account. I say to your Honor that where there is a complexity of intercorporate relationship, there is a doubt raised right away, and the thought in the popular mind,
5657 and even in the minds of us lawyers, is that may be that is used for the purpose of clouding the situation. They are pumping gas from one place to another and back again, they have so many different corporations with which to work, the relations with one a little bit different from the other, the relations as reflected in the figures in the books so complex that they must straighten them out before they even attempt to offer these books, we have got to know the details of it. We ought to have, if that is handled in Mr. Carter's office as was indicated by the witness, then
5658 Mr. Carter ought to get on the stand and bring his figures in here and show how it is done and relieve that doubt before we attempt to offer this set of books.

Now, I want to close as I began, your Honor, and say this, that it is with a desire to be right in this case, to follow the rules of evidence, that there be no irreparable losses caused to the defendant, that we not have put upon our shoulders the burden of proof in this

case. The burden is with them, and a great 5659
big burden it is when they are trying to wipe
from the statute books a law put there by the
legislature of this state. Now, be right, you
are not going to lose them any money. They
can go over the ground as we have said, if
your Honor feels that having gone along three
or four days we are accomplishing nothing
you might curtail the examination, you might
say I am satisfied first that there has been
a sufficient test applied in that particular set
of books, and we will go no more. We will
go along with the examination, it won't take
a great deal of time, your Honor, and after it 5660
is done, as I said before, if it is found those
books are not mathematically correct, that the
system is reliable, that their methods are
honest and fair, that there is no leakages or
wastage anywhere, then the conviction helps
them and they are benefited by it, and on the
other hand, if the other thing is found, that
there is no reliability, that there is no accur-
acy, that there is no fairness and so on, there
is something that needs to be explained, well,
then, the defendants will have just what they
are entitled to, the truth in the case. Now,
I say, your Honor, the only course is to be 5661
right in this matter, to conform to the rules,
not make a law, not stretch any rule of law
in this case because it is too important, and
we want, when we reach the end of it, to say
we have all done our duty to our clients, we
have served our city and our state to the best
of our ability, and we abide by the result. That
is what we want.

The Master: All right. Now, Judge Ran-

5662 som, do you think it is necessary to say anything? I have not changed my views about it.

Mr. Ransom: I do want to take an exception to certain expressions of opinion that the Court has made at this time with respect to certain phases of this case. I take it only for the purpose of preserving the record. I do not want to seem to acquiesce in it.

The Master: Do you question my statement that you have to show how much it costs to make a thousand cubic feet of gas?

Mr. Ransom: On the contrary, I expect to show very fully and have been waiting
5663 patiently to show that.

The Master: And you object to my statement that the simpler the proof is, the better off we are?

Mr. Ransom: No, I think the simpler it is the better off we are, but I think your Honor did fall into some misapprehension as to the nature of the proof.

The Master: I thought I made myself perfectly clear, that you know this case of yours better than I do, and you may have very good reasons for putting in the proof the way you are. I dont want to be understood as saying
5664 I would not do it as you are doing it, but as another stranger to the situation, what I wanted to say, and only that, is that in my experience it is not a very complex or difficult thing to show what it costs to make a thing.

Mr. Ransom: May I say this, that the difficulty is of course when you go into a business like gas it is a rather complicated operation. I have been proceeding in this case after a very close examination of the records in a great

number of cases where issues of this sort have 5665
been litigated, and I have pursued what I believe will be the most expeditious method of presenting the case, I find. What I mean to except to were indications of opinion by your Honor, in which you undertook to say what you would or would not do, and what decision or judgment you would or would not reach upon certain contingencies.

The Master: For instance, let's have this perfectly clear. I indicated that I would not make a finding of fact as to the cost of producing an article that I had any doubt about. Don't you think I am right about that? 5666

Mr. Ransom: Of course, if there is a doubt, any circumstances which create a doubt as within the rules that have been laid down by the Court in these cases, if the margin is so close that there is a doubt, then of course your Honor should not render judgment for the complainant. I expect to prove this case by a margin that leaves no doubt.

The Master: I don't think I will have the power to render any judgment, I will only have power to find the facts. Let's go ahead, I will receive the books in evidence, allowing an exception to the counsel for the defendants. 5667

Mr. O'Brien: That is under the limitation already expressed this morning?

The Master: The limitations will develop as the trial proceeds. I am receiving the books in evidence for what they are worth.

Mr. Chambers: I understood that to mean you would not take them as proof of the fact.

The Master: No, I am not going to make any decision as to what weight I will give it until

5668 that time arrives. I am taking them for what they are worth. I have very frankly expressed my views about a number of things, as I have from the outset in this case and expect to throughout the case. My view is that while it occurs to me there is something that bears upon the issues here, if my mind operates, I am going to express it. Other judges may not think that is a wise course to pursue, but I think it is. It is an equity case, no harm is done, and I am going to find the facts when this case is in, if the facts are proven to my satisfaction on any point presented by the
5669 counsel for either side, and I will not find a fact as to which there is any doubt in my mind. That is all I can say.

Mr. Ransom: Shall we hand these books over now to the stenographer to mark?

The Master: Yes.

Mr. Ransom: Or may they have in evidence the same number?

The Master: They will have in evidence the same number, but I would like to have the stenographer mark on each book——

Mr. Chambers: Your Honor, when those are in, will note that we have all taken an exception to your ruling?

5670 The Master: Yes.

Mr. Chambers: Now, we have had no opportunity to cross-examine Mr. Brundage as to the contents of the books. I take it that you are now going to put him on the stand and allow the defendant to proceed to cross-examine him fully upon the contents of the books?

The Master: Wait until they are marked, and we will take that up.

Mr. Chambers: Our examination heretofore 5671
was confined to preliminary, as to whether they were admissible.

The Master: I think what I will do with reference to that, Mr. Chambers, is this, I shall rule that Mr. Brundage is still under examination, and I shall use my discretion by postponing his cross-examination for the time being, with the understanding that you are not waiving any rights, and placing the burden on the complainant of procuring Mr. Brundage when cross-examination becomes necessary.

Mr. Ransom: May I say this on that point? I shall have to call Mr. Brundage to the stand 5672
later on in order to identify certain other books which are not here, and that may save some time.

The Master: What is in my mind, Mr. O'Brien, is this: I would like to see this case developed so that I can guide myself with reference to the extent of the cross-examination which I will allow with reference to the books. If I were to permit cross-examination to proceed now, I rather anticipate that I would have to give a very wide latitude which might extend over situations that might not be at all important after all, and I am doing what I am 5673
simply because I think it may save time. I am not going to penalize you to the end that I did before, with reference to Alrich, which you wanted the cross-examination adjourned; I am going to assume Mr. Brundage is still on the stand subject to cross-examination, postponing the cross-examination until later on.

Mr. O'Brien: Your Honor, you don't want to be impatient. This record is going to be right.

5674 There is no stop watch on me, as I have said before. Your Honor, I take it then you have on your own part suspended further examination of the witness?

The Master: Until later on.

Mr. O'Brien: Because you desire to have the case more fully developed?

The Master: Right.

Mr. O'Brien: Before we go ahead with the cross-examination?

The Master: Yes, I likewise have in mind——

Mr. O'Brien: Why, I say to your Honor, I wish you would rescind the ruling about re-
5675 ceiving these books and have them marked for identification, and allow the examination to develop a little more before they are received.

The Master: I won't do that. I am likewise suspending the cross-examination for this reason: Counsel for the complainant has stated in open court that these books and all supporting vouchers are subject to inspection and examination by accountants representing the defendants. I have no doubt that counsel for the defendants, whether the cross-examination proceeds now or later, will deem it their duty
5676 to check up some of these supporting vouchers with reference to these books, and it may be that your cross-examination will be more complete and more expeditious later on than it will be now, so I shall expect counsel for the defendants to make such examination of the books and supporting vouchers as to prepare for future cross-examination.

Mr. O'Brien: Well, that is just what we had anticipated a minute ago, when we made our

objections, that the burden of proof is being 5677
transferred to the defendants.

The Master: Not at all, I am suspending the cross-examination because I think it is my duty to do it, to permit counsel to make a more careful inspection of these books, to the end, among other things, that the examination when proceeded with shall be as expeditious as possible; in addition to which, as I have already stated, other proof may be in the case before the cross-examination of Mr. Brundage proceeds that may lead counsel to believe that there is no necessity for a lot of questions that they might now think are necessary. 5678

The Master: Judge Ransom, you now offer Exhibit 188 for identification, as Exhibit 188 in evidence?

Mr. Ransom: Yes.

The Master: The stenographer will strike out the words "for identification" and the exhibit will be received in evidence.

Book marked in evidence "Complainant's Exhibit 188".

Mr. Chambers: It is understood that our objection is taken to each one of the books, and on behalf of each of the defendants, and with an exception to each of the defendants? 5679

The Master: Yes.

Exhibits 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199 and 200 for identification, were received in evidence and marked "Complainant's Exhibits 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199 and 200".

Mr. Ransom: At the close of the hearing last Wednesday, I referred to the book called, 'Pay roll summaries", which, through inad-

5680 vertence, had been left at the office of the company, although a part of the books described and identified by the witness.

I now offer this book which has been referred to by the witness as "Pay roll summaries for 1918".

The Master: I would rather have Mr. Brundage take the stand.

HENRY M. BRUNDAGE resumed the stand.

By the Master:

Q. Mr. Brundage, in your examination the other day, you referred to the fact that there was an-
5681 other book kept as part of this general set of books?

A. I did, your Honor.

Q. Known as the pay roll book for 1918?

A. The pay roll summary.

Q. Pay roll summary for 1918?

A. Yes, sir.

Q. Which is a summary of the pay roll sheet to which you have testified, I take it?

A. Yes, sir.

Q. Is this the book that Judge Ransom has now produced?

5682 A. That is the book for the year 1918, yes, sir.

Q. Is that an original book?

A. That is the original pay roll summary book.

Q. Kept by clerks under your direction in your office?

A. Yes, sir.

Q. As part of the accounting system?

A. Yes, sir.

Q. Is it one of the books required to be kept by

the Public Service Commission, or don't they re- 5683
quire that to be kept?

A. They do not require that book specifically.

Q. Now, why are there certain of the sheets in short form and certain of them in long form?

A. Just as a matter of convenience, your Honor.

Q. I see that the first pages are short pages, and the next section are stubs, and then there are sheets running across the book. Will you explain the difference? We have, "Distribution of General Office Monthly Pay Rolls", that do not seem to be stubs, running from January to December. Then I find some sheets marked "Distribution of Labor, Hester Street Branch", and other branches, 5684
that seem to be stubs. Then I find a wide sheet running across the page, beginning with January, 1918, headed on the top "Consolidated Gas Company of New York, distribution of Labor, manufacturing stations report for month ending January 31, 1918". Will you please tell me—is this a loose leaf book?

A. This is a loose leaf book bound with posts, as you see.

Q. What is the first set of sheets, from January to December?

A. The first item you see is the salary of the general office, monthly pay roll, for the month 5685
during the year 1918.

Q. Yes, but further down I see "Distribution Superintendence," of various stations.

A. That is for the reason that, as I have stated in the testimony, that is the superintendence of each of these departments carried on the G. O. monthly roll.

5686 Q. G. O. meaning general office?

A. Yes, general office monthly roll.

Q. So that the first sheets to which I have referred are the general office distribution?

A. That is right.

Q. Now, the stub sheets are what?

A. These are prepared in the different commercial offices as I have already testified.

Q. These very sheets?

A. These very sheets.

Q. They are the way they come to you?

A. Yes, sir.

5687 Q. And are just fastened into this book?

A. Yes, sir.

Q. So that this sheet, for instance, the Hester Street branch, is prepared by a man in the Hester Street office?

A. Yes, sir.

Q. And not by the men in your office?

A. No, sir.

Q. So that here we have one of the original reports that come to your office?

A. Yes, sir.

Q. What is the significance of the stub, what was torn off?

5688 A. There was attached the pay rolls, giving the names of the men.

Q. Individually?

A. Yes, sir, and the classification is summarized here.

Q. What becomes of the balance of the page?

A. That is the pay roll itself.

Q. Is that the pay roll sheets of which you say there are 100,000?

A. No, the ones I say there are 100,000 of deal with all these items, the men who are paid on an hourly basis. 5689

Q. So that these stubs have to do with men who are on a weekly or monthly basis?

A. Yes, sir, weekly for these and monthly for these.

Q. And the part that is missing here contains the names of the individuals?

A. Yes, sir.

Q. Why is that torn off from this stub?

A. Well, that is the routine of the company. The pay roll, of course, has to indicate the name of the men, and the amount to be paid specifically, in order that the paymaster may pay the individual man the money to which he is entitled. 5690

Q. Where are those sheets?

A. They are available in the office.

Q. Are they in your office?

A. They are subject to my jurisdiction, your Honor.

Q. And I suppose they are up in 15th street?

A. Yes, sir.

Q. The balance of the book containing the sheets that run across the page is a summary of the prior sheets? 5691

A. No, this is a summary of all the men working at the stations, and as a matter of convenience we are able, by having this wider, to put four stations on one.

Q. These wider sheets are prepared in your office?

A. Yes, sir.

Q. From other memoranda that come in?

5692 A. From the voluminous detail of these individual workmen's weekly cards to which I testified.

Q. The entries in this book are made in your office?

A. Yes, sir.

Q. Entries on the stubs are made by the men in the various branches?

A. Yes, sir.

Q. Entries on the first short sheets are made by men in your office?

A. Yes.

5693 Q. This book is kept in the office and added to from month to month as the sheets are placed in?

A. Yes, sir, one for each month.

The Master: I take it that counsel for defendants object to the reception of this book on the grounds already stated?

Mr. O'Brien: I would like to ask some questions, your Honor, before making my objection.

By Mr. O'Brien:

Q. Mr. Brundage, taking just that part of the pay roll system which relates to the works, there is a work ticket for every day?

5694 A. No, there is an individual workman's card made up for each week, and on it it shows the amount of labor performed each day of the week.

Q. That would cover the engineers and firemen and gas-makers, and so on?

A. At the works, yes.

Q. All the employees?

A. All the employees on an hourly basis at the works.

Q. And weekly cards are sent to the main office? 5695

A. Yes, sir.

Q. What is done with them then?

A. They go to the pay roll department.

Q. Then what happens to them?

A. There the rates to be paid as indicated by the records on file in the pay roll department are listed upon the cards, the number of hours at this given rate is multiplied and crossed to the end of the card, and the amount of money due the man is computed. Then from those cards a classification is determined, that the work is to be charged to, and the pay roll is made up showing the men's 5696 names and the amounts to which they are entitled.

Q. When the card comes to the main office there is applied to it the wage per hour or per day?

A. That is done at the general office.

Q. At the general office?

A. Yes.

Q. Then you say there is a classification; what do you mean by that?

A. By the classification I mean the accounts to which the labor is to be charged.

Q. Then what happens? They go then to where?

A. Then the pay roll itself is prepared.

Q. When do you bring in the Hollerith system? 5697

The Master: What is the Hollerith system?

The Witness: The Hollerith system is a mechanical device for readily handling thousands of cards.

Q. Yes, explain to the Court what it is, and how it is applied to these tickets.

A. I am afraid I am not much of a mechanic, but I will endeavor to describe the system. The cards,

5698 these individual workmen's cards, show the account by number to which they later are to be charged. Let us take a specific example. A fireman in the works will be charged "Boiler house firemen". The superintendents at the works have before them a code, if you will, showing the numbers of the accounts and the names, and they go to a card where a boiler house fireman has worked during the week. A boiler house fireman would be, we will say, an account of a certain number, and on this individual card that the superintendent signs, that number is given for his work. This card goes to the pay roll
5699 department and cards—a stiff card that goes with the Hollerith machine—is punched for account number so-and-so. Now, thousands of these cards are so punched, and then this Hollerith machine is a mechanical device into which the cards are fed, and as they are fed they automatically register the amount to be charged on each card.

The Master: Those are some of the cards I saw used on some of the dining cars on the railroads?

The Witness: I do not know, your Honor.

The Master: I looked at some of those. They looked weird to me.

5700 The Witness: The first time, your Honor, that I ever saw that system in operation, I was at the Census Bureau in Washington, where they had thousands of tabulations to make, and the Hollerith system was at that time, and I believe is yet, the best and most expeditious system of handling a great volume of cards.

Q. How many different classifications have you for the works?

A. Oh, I should say forty or fifty or sixty 5701
accounts, probably.

Q. And how many different classifications?

A. Say anywhere from forty to sixty different classifications.

Q. Is there a clerk particularly in charge of payrolls?

A. Of payrolls?

Q. Yes.

A. At the general office?

Q. Yes.

A. Yes, sir.

Q. A chief payroll man too? 5702

A. Well, we call him the chief clerk of the Hollerith department.

Q. How many work with him there?

A. He must have 12 or 14 young women and one or two men.

Q. So the work tickets come in from 21st street and 99th street and from the branch commercial offices?

A. No. I have already testified that the commercial office men, who are all on a weekly roll, the superintendent sees to it that that roll is made up and verified. The men on the hourly roll go through this routine in the general department. 5703

Q. The works tickets are sent to the Holierith department and they go through the machine and notations are made, distributions are made through the Hollerith machine?

A. Yes.

Q. That is on a record. How does it come out of the Hollerith machine, on a card or a sheet of paper?

5704 A. Why, it comes out summarized on a sheet, and the cards are also a matter of record, filed by departments by weeks.

Q. And that sheet is what you have produced here?

A. Yes, sir.

Q. Except in those instances where you have not brought the sheet and you only have the stub?

A. Where we have the stub, as you call it, referred to, that is commercial department people who are made up on a weekly basis, as I have testified.

5705 By the Master:

Q. These stubs do not have any relation to those Hollerith cards?

A. Not any connection whatever. Hollerith only has to deal with the hourly men.

By Mr. O'Brien:

Q. The hourly men?

A. Yes, sir.

Q. The Hollerith system is used as leading up to distribution.

A. Yes, to get the classifications.

Q. Yes, it does not lead up to the pay roll itself, such as we have already offered in evidence and re-

5706 ceived in evidence?

A. I do not know as I quite grasp your question.

Q. It is not an intervening link in the process of producing the pay rolls for the works?

A. No.

Q. Such as have already been offered in evidence?

A. It is to get an expeditious method to summarize the classifications. The pay roll itself is made up from the individual cards, but the classifi-

cation, as a matter of expedition, is taken through 5707
this Hollerith system.

Q. It does in a machine what the journal does as to certain accounts that are thrown into it, distributed?

A. Well, I would not say that; I would not say that, Mr. O'Brien. May I explain briefly, so you may get it thoroughly in mind? The payroll itself is made up from individual cards, and the payroll is totalled, and there is a certain amount of money in total as represented by this pay roll. These cards will then go through the Hollerith system, and the classification is determined from the 5708
original cards, vouched for by the superintendent.

Q. The Hollerith system will draw together the laborers on gas making?

A. It will draw together the proper classification and the total classifications must prove with the total amount of the payroll.

Q. Give us some illustrations of the classifications that have the various items drawn together through the Hollerith system?

A. Well, you have that right here, Mr. O'Brien.

Q. I am asking you to tell me them. Never mind about the book.

A. Well, let us take what station, for example? 5709

Q. Maybe you have some of the cards here that would illustrate it?

A. I have one card in my box. Would you care to look at it?

Q. Haven't you brought any from the files that would show these actual cards that are used?

A. No, sir.

5710 Q. Haven't you produced any of the works tickets?

A. Certainly not.

Q. Why do you say certainly not?

A. No one has asked me to produce such a record. I have a sample of those cards that Mr. Chambers asked me to produce, and I gave him several of them.

Q. Well, go ahead then with some illustrations.

A. You started to ask me the classifications.

Q. The classifications, yes.

A. At a station we would get superintendents,
5711 retort house firemen, boiler house firemen, purifier house men, repairs to water gas sets and accessories, repairs to structures, repairs to purification apparatus, repairs to generators, repairs to any other of a whole string of pieces of apparatus, repairs to tools.

The Master: That is enough for that. Why is it necessary to classify in that way, Mr. Brundage?

The Witness: Because those are the accounts which the Commission sets up in their system and to which we are obliged to make these various charges for labor.

5712 Q. When the work card comes in it has the name of the men, has it, their numbers?

A. It has both—both the man's name and number, and station.

Q. And what else does it show?

A. It shows his badge number and his name.

The Master: Have you got that sample card here?

The Witness: Yes, I have one here.

The Master: Let me see one. 5713

The Witness: (Produces card.)

The Master: Is this a sample used in the department, in all departments?

The Witness: That is used in all departments where men are paid on an hourly basis.

Q. Where would the name be?

A. At the top, the left hand corner, the name and number.

Q. Then you have on this card the rate and account number?

A. Yes.

Q. The job number? 5714

A. Yes.

The Master: Just a minute, Mr. O'Brien. What is filled in on the line designated as "Time Card"?

The Witness: That is for the purpose of filing in the payroll department.

The Master: What is written in there?

The Witness: The number.

Q. Then you have the days of the week?

A. Yes.

Q. The total hours?

A. Yes.

Q. And the amount? 5715

A. Yes.

Q. Then up above is a title you have "Consolidated Gas Company of New York Time Card", with a blank space. Is that for the number?

A. No; that is for the purpose of filing in the Hollerith Department.

Q. What is inserted then in that blank space?

5716 A. A number. 1, 2, 3, 4—numbered right down in sequence.

Q. Then the date of the ending of the week is inserted?

A. Yes, sir.

Q. This done weekly?

The Master: On the back of it is some red ink, apparently the same thing. What is the purpose of that?

Mr. O'Brien: I have not got any red ink on this one.

The Witness: I brought two in case you wished to know. The one Mr. O'Brien has is
5717 what might be called a regular week's payroll. That is a week running within a current month. Where we have what is known in accounting practice and general business practice as a split week, for example, where the 31st of the month falls on a Wednesday, your Honor, in that case we would use that card for the split week, inserting on the black card the number of days applicable to the old month, and on the reverse side there, the number of days in the new month, in order that our classification may be properly charged by months.

5718 Q. In other words, this card is the same as the black ink card?

A. Yes, the same thing, same card.

Q. What inscription is made on this work-ticket where a man spends part of the day on one kind of work and part on another?

A. Looking down the card there that you have in your hand there would be on the first line—we will say that he is a retort house fireman,

account No. 36. There would be inserted there 36 5719
and in the column showing the days there would be recorded the number of days he worked at that kind of work. Then he might have been diverted to repairing a building. If he were that would be account No. 49, we will say, and on the next line No. 49 would be inserted, and opposite the 49 the number of days he worked on that. In this column marked, "Account number" he might have two or three or four classifications if he worked at two or three or four kinds of work.

Q. And these are written up by the foreman at the works, or the superintendent? 5720

A. These are made up either by the superintendent personally or by his station clerk. They are compiled from the time books of which I brought two samples and submitted at Mr. Chambers' request. These are signed, Mr. O'Brien, by the superintendent, each individual card.

Q. Then the differentiation of the time of a given employe at the work, into an account, that is the allocation of his pay for a given day or given days?

A. Yes.

Q. And is affected by this time slip made out by the superintendent at the works or his clerk? 5721

A. Yes.

Q. In other words, the various allocations and distributions that are finally made in the payroll department and ultimately in the books of account that have been offered in evidence depend upon the allocation or distribution made by some man at the works such as the superintendent or the works' clerk?

5722 A. And in turn supported by the original time book.

Q. The time book goes in with this, too?

A. The time book at the works, of which you asked me for a sample, is the original time book.

Q. I have not asked you for a sample?

A. No, Mr. Chambers, when he came to the office, asked me to particularly produce a couple of station time books, which I did produce, and they are here in court.

Mr. Chambers: The complainant produces the books.

5723 Q. Does this come down every week with the works' tickets (referring to the time book)?

A. No, sir.

Mr. O'Brien: I will ask to have that marked for identification.

Book marked Exhibit U for identification.

Mr. Ransom: We also produce a similar book for the 21st street station. That has not been marked for identification.

Q. Then how often does this time book come down to the main office?

A. It does not come to the main office, but is
5724 retained by the station superintendent in his permanent records.

Q. You said a minute ago, referring to the works' tickets, verified or checked by the time book, didn't you?

A. I did.

Q. You mean checked by whom?

A. By the superintendent before he signs the individual cards.

Q. But the book itself does not come to the main office at any time? 5725

A. No, sir.

Q. Now, this defendants' exhibit U for identification purports to be the time book for the 99th street station?

A. It does.

Q. And it has in the first column the number of the employee?

A. Yes, the badge number.

Q. And the second column the name?

A. Yes.

Q. The third column a designation of the employment? 5726

A. Yes.

Q. Generator fireman, tar man, watchman, etc.?

A. Yes.

Q. And then the days of the week in which the time is carried through?

A. Yes.

Q. The numbers in each column being the hours they have worked?

A. Yes.

Q. The total number of hours in another column, then the rate multiplied by the number of hours, or is that the rate per hour? 5727

A. That is evidently the rate per hour.

Q. And then the amount earned, the total amount. That is correct?

A. Yes.

Q. Now, I call your attention here to——

A. May I call attention to the fact that the particular page you turned up, those two columns ap-

5728 pear to be in pencil, and are not part of the record that comes to the general office.

Q. The date I call attention to is March 10, 1917?

A. Yes.

Q. And it has the rate per hour?

A. Yes.

Q. And has the total amount earned carried out to the right?

A. Apparently so.

Q. And that was the practice at that time, was it?

A. It appears to have been.

5729 Q. Well, don't you know?

A. Well, there it stands on the record.

Q. I am asking you what you know about the practice.

A. I know it is not the general practice to insert that kind of data in that time book. The evidence is in looking at subsequent periods.

Q. Well, let us see when it changed. Was that surplusage?

A. I should think it was, undoubtedly. It does not seem to have been done before or after.

Q. How do you explain De Pastro putting it in on these particular days?

5730 A. I do not explain it; I do not know.

Q. Is there some period of the year where you have it checked up?

A. Not in any such manner as that, counselor.

Q. Well, we will go over here.

The Master: You know you are putting this book in evidence by your examination, don't you?

Mr. O'Brien: How?

The Master: By inquiring. 5731

Mr. Ransom: I have been entirely willing to let Mr. O'Brien proceed, because I realized the consequence.

The Master: That is the rule.

Mr. O'Brien: I am asking him about the system.

Mr. Ransom: That is your exhibit, not ours.

Mr. O'Brien: I am asking him about,——

Mr. Chambers: It is only for identification.

The Master: The minute you take a book marked for identification and interrogate a witness about the contents of it, you are prac- 5732
tically putting it in evidence.

Q. The notations made here on January 6th show the account of some of the employees divided up into various items?

A. They do.

Q. And how is that expressed on the card that comes down?

A. By the means that I have already described, each kind of work having a classification given by number and shown on this card, account number, whatever it may be.

Q. Do you recognize the handwriting? 5733

A. I do not.

Q. That is De Pastro's, is it?

A. I would not care to say; I do not know.

Q. Haven't you seen his handwriting?

A. I have.

Q. Don't you recall it?

A. No.

Q. He has been with the company a good many years?

5734 A. He has.

Q. What is your particular work with these accounts, do you get close to them in your work, or is your work purely supervisory?

A. Supervision over the accounting department and the accounting records of the company.

Q. You have charge of the accountants?

A. Yes, sir.

Q. And your personal work does not bring you in contact with the individual books?

A. As I have already testified, this book very, very seldom I see. It is retained at the station.

5735 Q. And never sent down?

A. I have no occasion to look at this book.

Q. Well, it is never sent down to the main office?

A. Not so far as I know.

Q. Do you know these notations here?

A. Here I find "8 hours brick".

Q. What does that mean?

A. That is a term used in the station for what they call checkering the fire brick in the generator.

Q. How would that be classified?

A. That would be charged to repairs, water gas sets and accessories.

Q. Now, take the carpenter here.

5736 A. Samuel Fandor, that seems to be.

Q. He is marked as a carpenter?

A. Well, he appears to have worked on this particular day, Sunday, January 6th, one hour, on the hoisting machine; two hours on the platform scale; and five hours on the purifier house.

Q. That is "P. H."?

A. P. H., that means purfier house.

Q. Then the next day he worked on what?

A. Two hours on sharpening tools; one hour at getting—that writing is pretty fine to read with my eyes. 5737

Q. It is all pretty fine, these little insertions there, aren't they?

A. You see this class of men, these mechanics, are so shifted around on different work that they are obligated to squeeze them into a small space.

The Master: They are not insertions, Mr. O'Brien.

The Witness: No, they have to be in this limited space.

The Master: There is a small space in which the work done must be described, so it must be squeezed in. 5738

The Witness: Yes, sir.

Q. What is that?

A. Two hours sharpening tools; one hour——

Q. Isn't that "s-h-o-p"?

A. I should read that to be "s-h-p-g", sharpening tools. A carpenter would be assigned to that kind of work. Here is one hour—well, I can't read it.

Q. Get up something, isn't it?

A. Getting up something. These last words are "getting up cover for hose wagon". Here is four hours framing for wagon, it looks like, and two hours repairing platform scale. In that class of labor, mechanics, fitters and riggers, and carpenters, their work is such that they are assigned all over the plant to do repair work to keep the plant in proper repair, and they naturally are obliged to split their time very considerably. 5739

The Master: What is the purpose of this examination, Mr. O'Brien?

5740 Mr. O'Brien: This brings out just what I have been driving at in connection with all these books, that we have an original record here, and somebody has differentiated those amounts. Now, take the expense at the works, a good portion of it will have to be charged up to operating expense and a portion to capital account. So, with the street department. It is a vital thing to know the allocations are correct. In the street department they might be laying new mains, and they might charge it up to repairing mains, and make it an operating expenses and swell the operating expense for a
5741 given time. So, we have to have verified and known that they are properly verified, these allocations to various accounts. It has been brought out here that time is kept by the foreman, I suppose the man in the generator house takes charge of his men, the foreman of repairs takes charge of his men, and a report is turned in, and then a clerk in the office will make up his time slips, and he turns them in, and they keep a permanent record. Now, you see what we could have had if they wanted to——

5742 The Master: No, I will not go into that.

Mr. O'Brien: What I am driving at is this, that this book, a permanent record, easily handled, covering several years, of all the men at that work, could be produced here instead of these thousands of cards that they have impressed your Honor with.

The Master: Your objection is——

Mr. O'Brien: The objection I am leading up to is this——

The Master: That that book should not be received because it is not a book of original entry? 5743

Mr. O'Brien: Yes, and besides that, that one of the links in the chain, or one of the processes in the channel of operation from the works to the final resting place in the book they now offer in evidence, is a mechanical machine that makes distributions and additions before they finally make up their list. That means that you cannot accept that book here.

The Master: I am going to receive it for what it is worth. It will be marked in evidence. 5744

Mr. O'Brien: Your Honor understands of course that the system here by which these figures get into the book is through the Hollerith machine. I want to ask the witness, before your Honor rules, about the book itself.

Mr. Ransom: His Honor has ruled.

The Master: If Mr. O'Brien has any more questions pertinent to this objection I will let him ask them. I thought he was through.

Q. What is this book called?

A. We call that the pay roll distribution.

Q. It is kept from month to month? 5745

A. Yes.

Q. A loose leaf book in which you bind together the summaries of various pay rolls?

A. Yes.

Q. And as to the branch offices, how is that kept?

A. The sheet that you have in your hand——

Q. The commercial branch offices?

A. The sheets respecting the branch offices are

5746 made up at the branch office coincident with preparing the pay roll.

Q. You have told us how the record comes in to you from the works, and you have indicated that the payrolls, so far as the branch offices are concerned, come in all O. K.'d?

A. Yes, they come to us approved by the superintendent.

Q. Then you paste them into this book?

A. No, we do not paste them into this book, we bind them in.

Q. You bind them into this book?

5747 A. We bind them in, the classification.

Q. They are the original records found here?

A. Yes, so far as the branch offices are concerned.

Q. Take some work that is done on mains in the street department by the complainant for affiliated companies, how is that recorded on time sheets, and how does it find its way into this distribution, if it does?

Mr. Ransom: I object to the question as not within the scope of cross-examination upon the offer now being made.

The Master: I will allow that question.

Mr. Ransom: Exception.

5748 A. The Street Department payrolls are made up in the same manner as the station payrolls, all of the men except the superintendents being on an hourly basis, and their cards come in to us the same as any other employes on an hourly basis. The work performed by a given street department for account of another company, a record is kept of the amount of time so spent, and a record is sent to the accounting department in the shape of a memoran-

dum which we call a charge ticket, to charge a cer- 5749
tain company for a certain number of hours at a certain class of labor, at a certain rate per hour, and on that record the accounting department bills the company for which the service has been rendered, and credits the account to which the labor was charged from the payroll.

Q. Have you a sheet that is a summary of the work of the Street Department? You have before you a summary of labor, Street Departments, for the month ended January 31, 1918?

A. I have.

Q. I call your attention to classification No. 30, 5750
and ask you if there are not named there as subtitles under that classification number various affiliated companies of the complainant?

A. I find a number of such items.

Q. And amounts are carried out in some instances opposite the names of said affiliated companies?

A. Yes, sir.

Q. Then it is true that some of these charge tickets, or the notations on them, find their way into this book?

A. Except in this respect, if I have not made it 5751
clear——

Q. Answer that yes, or no.

A. Ask the question again and I will tell you.

Q. Is it not a fact then that those charge tickets that you have just been describing do affect this particular book?

A. I should not say so.

Q. And are not the amounts on some of the charge tickets noted in this book?

5752 A. The charge tickets are the basis for the accounting department to charge, for example, the New Amsterdam Gas Co. with a certain amount of labor.

Q. Doesn't that mean the same thing?

A. No.

Q. Isn't this amount here of $89.59 opposite 304, New Amsterdam Gas Company—are we not to assume that that came in on a charge ticket?

A. No, sir, it came to us in that record right before you. The charge ticket is different. You are trying to identify a payroll classification——

5753 Q. I asked you——

Mr. Ransom: Let him finish his answer.

Mr. O'Brien: I don't want him to tell me what I am trying to do, I am trying to catechise him.

Mr. Ransom: I insist that the witness be given an opportunity to finish his answer, and if it is not proper, Mr. O'Brien may move to strike it out.

The Master: The stenographer will please read the last question and answer.

(Stenographer reads.)

The Master: Mr. O'Brien, I shall assume
5754 that the witness has answered the question. Have you another question to ask?

Mr. Ransom: I wish to make an objection. The stenographer has just read what took place, and it indicates that the answer has not been finished. The stenographer said there was an interruption.

The Master: I shall rule that the witness has sufficiently answered the question. All

that was necessary was to say, "No". If Mr. 5755
O'Brien wanted any further explanation he could have asked for it. It was quite apparent to me when the question was asked that the answer would be "No" because it did not come in on a charge ticket, and Mr. O'Brien is confusing the charge ticket with the payroll card.

Mr. O'Brien: I want to bring this out——

The Master: I will bring it out myself, and then I will stop the cross-examination.

By the Master:

Q. On this sheet to which Mr. O'Brien has di- 5756
rected your attention, I find Item 30, General Suspense, Companies and Individuals, and under that various printed items as follows:

301, Liability Insurance Trustees.
302, Astoria Light, Heat & Power Company.
303, East River Gas Company of Long Island City.
304, New Amsterdam Gas Company.
305, Central Union Gas Company.
306, Northern Union Gas Company.
307, Standard Gas Light Company.
308, New York Mutual Gas Light Company.

In answer to Mr. O'Brien's question, and I think 5757
in answer to a question I put to you, did I understand you to make the statement that the charges made on the bills or cards for work done for other companies did not come into this book at all. Now, is it not a fact that those payroll slips or cards include all the time spent by the men on all work, including work for other companies?

A. Yes, that would be true.

Q. And to that extent you do transfer to this

5758 book so much of the time appearing on these time slips as is applicable or chargeable to other companies?

A. That is true.

Q. And in distributing the amount of time used and paid for in that book, to the various classifications, you do classify them into charges against these companies from which charge slips are made, on which you base your bills to these various companies, so that to that extent this book does contain items of work done for other companies appearing on these pay roll slips?

5759 A. That is true.

By Mr. O'Brien:

Q. So if a man is working in the street department, and he puts in half a day on the mains of some other company, then his time slip would show half a day for the complainant company and half a day for the other company?

A. Yes.

Q. And in addition to that there is a charge ticket made also?

A. Yes, sir.

Q. When I asked you first you didn't say there was a notation made separately on the time slips,

5760 but you said it was covered by a charge ticket?

A. That is true. There are both records, from this pay roll and from the charge ticket.

The Master: It is perfectly clear, and Mr. O'Brien has developed the point that this book, as others, depends upon other records and the action of other people, and I do not think it is necessary to have any more examination about it.

Mr. O'Brien: Wait a minute, your Honor. 5761

Mr. Chambers: I want to examine him a little bit.

Mr. O'Brien: There are other matters to be brought out here.

The Master: Bearing upon the general character of the book?

Mr. O'Brien: Yes, bearing upon the way in which it is kept.

By Mr. O'Brien:

Q. Do you know whose handwriting this is?

A. No, I do not identify that handwriting.

Q. In addition to the printed titles of the various 5762
accounts, there is an additional list of accounts written in pen?

A. Yes.

Q. Is that supplementary or explanatory of previous entries of moneys, or is it something in addition?

A. It is supplementary to these printed headings, and written in here in ink.

Q. There are various pencil entries in this book?

A. I didn't notice any.

Mr. Ransom: Referring to what period?

Mr. O'Brien: The month ending January 31, 5763
1918.

Mr. Ransom: Distribution of labor, street department.

Q. Have you audited this account?

A. This particular record?

Q. Yes.

A. Well, it is hard to answer that kind of a question.

Q. You know what an audit is?

5764 A. There are all kinds of audits.

The Master: Have you audited this book any more than you have testified the other books of account for 1918 were audited?

The Witness: No, under the same general system.

Q. Oh, the system?

A. Yes.

Q. That is the answer, the system.

The Master: Now, Mr. O'Brien——

Mr. O'Brien: I am going to take it just as he gives it.

5765 The Master: Well, he says the same general system; that is his answer. We have the system, and I won't let you go over it again.

Q. Is there in your employ an auditor of pay rolls?

A. We have an auditor, a man with that title.

Q. Does he periodically make an audit of the pay rolls?

A. He audits every pay roll of the company.

Q. What is his name?

A. Frank L. Lambrecht.

Q. Is he still with the company?

A. He is still with the company.

5766 Q. And he has been with the company a number of years?

A. Quite a number of years.

Q. And in that particular capacity he has filled in for how many years?

A. Oh, fifteen years, at least.

Q. And is his signature on this?

A. No, sir.

Q. Is there the signature or O. K. or approval

of any officer of the company or any employee of 5767
the company?

A. On this record?

Q. Yes.

A. No, sir.

Q. Are there any other distributions made for any of the items or amounts entered here in the journal supplementary to these distributions?

A. No, these sheets are used for posting these various amounts to the operating ledger. Let us take a page if you will. Here are noted folios to which these various classifications are posted, and these are the ledger postings. 5768

Q. Then in each instance on each page we are to assume that in the column following the entry, the numbers refer to the operating journal?

A. Yes, sir.

Q. What are the distributions which are made in the operating journal; are they exclusive of these distributions?

A. I wish you would make your question a little more specific.

Q. Perhaps I can make that clearer for you if I get the operating journal and show it to you.

A. All right.

Q. I show you Complainant's Exhibit 191, the 5769
operating journal, January, 1918?

A. Yes.

Q. Beginning with the first of January, at least with the month of January, we have various items recorded in the operating journal?

A. You have.

Q. They are put in by number, and not by date?

5770 A. By number, each journal entry bearing its own number, in regular sequence.

Q. But they are not in chronological sequence, are they?

A. No, they are all entered as of January 31, and February 28, and so on.

Q. These entries, do they overlap, the entries made of the distributions made in the pay rolls before your—in the pay roll summaries book before you?

A. I do not grasp that question, overlapping.

Q. I have asked you previously whether the dis-
5771 tributions of items involving labor in the journal, in the operating journal, is exclusive of the distributions made in the pay roll book?

A. There might be a case where certain labor from the record that you have now looked at was charged to a certain account, and then perhaps apportioned amongst possibly some other companies. I can conceive that that might happen, but I do not recall such a case happening.

Q. Let me direct your attention——

A. Give the thing in some phrase that I can reply.

Q. Well, I will put it this way. As to the pay
5772 roll—the summary of pay rolls before you cover the year 1918?

A. Yes.

Q. It is a summary of all and every payment made on a pay roll, isn't it?

A. Yes.

Q. There are various entries in the operating journal for 1918 that involve labor?

A. Yes.

Q. Are they exclusive of the labor items on the 5773
pay rolls? Are the items of labor recorded in the operating journal exclusive of the items of labor in the summary pay rolls?

A. If there are any items of labor dealt with in the journal, they would be made subsequently to the work that is described in this pay roll classification.

The Master: And would you refer to the same items?

The Witness: Perchance so, yes.

Q. Well, is there any perchance about it? Isn't it positive truth? 5774

A. Well, now, I don't know that I can speak from the legal aspect of the question you are asking.

Q. I am not dealing with legal aspects; we are dealing with facts. All the way through this journal there are distributions of labor accounts?

A. Find me one, then I can answer the question.

Q. Do you want me to find it?

A. Yes.

Q. Don't you know?

A. I don't know what account or accounts.

Q. Aren't you enough acquainted with the journal to say which are the entries or items in there in- 5775
volving labor?

A. Show me what you want and I will answer the question specifically.

Q. Can't you answer yes or no?

Mr. Ransom: Your Honor, I object to counsel bulldozing the witness. The witness is entitled to fair treatment and courtesy and not only at the hands of the Court but counsel, and

5776 the whole menacing attitude of Mr. O'Brien is a denial of a constitutional right in itself.

The Master: Do not let us worry about the constitution just now.

Mr. Ransom: I have to.

The Master: I get the impression from Mr. Brundage's testimony that he doesn't think there are any items in the journal dealing with labor. Am I correct in that impression, Mr. Brundage?

The Witness: No, that is not true, your Honor.

5777 Mr. O'Brien: He doesn't mean that, your Honor.

The Master: Will you let me alone for a minute. Now, will you just run through it and see if you can locate some labor items that we can talk about?

The Witness: Yes.

Mr. O'Brien: Turn to any cartage account, the distribution of cartage.

The Master: Is cartage a labor item?

The Witness: Cartage has labor in it, your Honor.

Mr. O'Brien: Can it be that I know more
5778 about this book than he does, your Honor?

The Master: Yes, it is quite possible.

Mr. O'Brien: Well then, my objection should be sustained.

The Master: Will you point to the item you have located?

The Witness: You have asked me about the account of cartage. Cartage is what is known in accounting practice as a clearing account.

There is charged to that account the labor at 5779
the stables and the labor for drivers and the repairs of the carts and veterinary services and horseshoers and all the things that go to keep your stable in operation. A record is maintained of the work done by that department, so many hours in carting ashes or in connecting with repairing mains, or in repaired buildings, whatever is done by the carts, and each month there reaches the accounting department a report so many hours of cartage for each of those different accounts, and that leads to this entry, whereby we create the clearing account. 5780

The Master: We are now referring to page 23 of Exhibit 191, entry 61, sundries to cartage. Now, in that sundries to cartage is there an item of labor?

The Witness: In the cartage account there is labor.

The Master: Well, in this particular item itself, No. 61, is there any labor?

The Witness: I had better go on with the rest of the item, your Honor, that you may have it clearly in mind. We charge to the clearing accounts all the labor and other expenses of maintaining the cartage department. 5781

The Master: Yes.

The Witness: The work that they do for these various accounts comes to us at the end of the month, and at a rate per day, and that rate includes our estimate of everything that they do, including the labor and cartage and horse-shoeing and so forth, and we charge these

5782 various accounts that you see here, sir, and credit the cartage account.

Q. It includes labor?

A. There is labor charged to cartage, as I have described.

Q. Can you say whether that is supplemental to the regular pay roll?

The Master: Do not let us use the word "supplemental", and we will get all the facts.

Mr. O'Brien: Well, in addition to. I put it in his own terms.

The Master: The labor included in the cartage account is on these pay roll slips?

5783 The Witness: Yes, sir.

The Master: When you get the pay roll slips, you apportion it or classify part of that labor to the cartage account?

The Witness: They do, always charged to the cartage account.

The Master: That is charged to the cartage account?

The Witness: Yes, sir.

The Master: Now, in the sense that the cartage account itself goes into the journal, is that charged to various subdivisions and depart-

5784 ments?

The Witness: Yes.

The Master: There is included in this journal entry and there is assessed out of the journal, some of the labor that appears on that sheet?

The Witness: Yes, your Honor.

The Master: Now, have you ever found here any item of labor as such not charged to any other account?

The Witness: How is that? 5785

The Master: Labor as such not already classified to some other account, like cartage.

The Witness: Why, we carry several clearing accounts.

The Master: No, is there any account that is headed, "Sundries to Labor" or anything of that sort in here?

The Witness: No, I should say not. I do not recall any at the moment.

Mr. O'Brien: Turn over a few pages.

The Master: I see some more cartage there.

Mr. O'Brien: There will be a lot of them. 5786
You will see on toluol there in a minute. I have been over them and I called his attention to it on the cross-examination yesterday.

Mr. Ransom: I object to this line of examination. It is not at all examination with respect to the admissibility of the book which is now offered in evidence.

Mr. O'Brien: It cannot go in unless it is assumed to be accurate, Judge Ransom.

Mr. Ransom: I was addressing the Court. I object to the interruption.

Mr. O'Brien: I am not through with my examination. 5787

Mr. Ransom: Let me state my objection. It has nothing to do with the offer. It can only relate to some kind of cross-examination concerning the books.

The Master: Well, that is not entitled labor, though?

Mr. Ransom: Will the Court rule on my objection?

5788 The Master: Your objection is noted, Judge Ransom. I am trying to limit this examination myself.

The Witness: Your Honor, counsel calls to my attention page 9, entry No. 27, and thinks that perchance this covers his point. The entry to which he refers is as indicated in the heading for the cost of materials transferred from one station to another during the month.

By Mr. O'Brien:

Q. I have not any point. I am groping; I am trying to find the truth.

5789 A. Let me see if I can give you an answer.

Q. Isn't that a labor account right there opposite the letters 761 work on consumers' premises?

A. Work on consumers' premises——

Q. Those are labor items, are they not?

A. Those are items divided in our accounts between labor and materials. It takes two things to do work on customers' premises.

The Master: Right in that item he said is included materials.

Q. Turn over here. You have repairs to mains, repairs to buildings.

A. All right. The heading of the account simply
5790 recites, distinctly recites, that this is for the cost of material transferred from one department to another through the inter-departmental vouchers I have already testified to.

Q. Are we to assume that every item of labor that may be in that operating journal is taken care of in another way in the payrolls?

A. I believe I can say——

Q. I have not asked you that. I think that is a 5791
fair question.

A. Let me give you one answer to your question.

The Master: That is all I am going to have on it.

Mr. O'Brien: There are thousands of items of labor in that book, your Honor.

The Master: But your inquiry is not at all directed to the competency of the book offered.

Mr. O'Brien: Your Honor has ruled that in order to get any of these books in they have got to be assumed to be accurate.

The Master: Yes. 5792

Mr. O'Brien: This witness is the only one we can determine the accuracy through. Unless he can show they are accurate, unless under oath here he making a statement as to these books can show under cross-examination that they are accurate, that he knows enough about them to say they are accurate, then they cannot go in.

The Master: I have already said what the substance of his testimony is. He is the head, he is the official in this complainant company, that has to do with this bookkeeping system. He relies upon subordinates, clerks, time- 5793
keepers, foremen, superintendents, and auditors, people on this machine, the Hollerith machine, or whatever it is called, and all he can say is that these are the regular books of account and all he can say is what he already has said as to the methods they use to check these accounts from time to time. I have tried to make it clear to you that the books are re-

5794 ceived for what they are worth, in the light of this witness's testimony, and what I am trying to make clear to you is that your present inquiry is not helpful at all on the point of the accuracy of these books.

Mr. O'Brien: You had a duplicating of accounts; the witness has not given us a definite answer here.

The Master: Oh, yes.

Mr. O'Brien: There are countless items in this operating journal that involve labor and he does not seem to be sure whether the payroll
5795 covers those items.

The Master: His testimony is perfectly clear to me that as the payroll slips come into his departments they are classified against various accounts, including cartage, storage, repairs and other general subdivisions of that kind, and that those items to which these payroll items are charged will again be found in the journal. Isn't that correct, Mr. Brundage?

The Witness: In so far as labor might be charged to a clearing account, your Honor.

The Master: I say the items to which the labor was charged will again appear in the
5796 journal?

The Witness: Yes.

Mr. O'Brien: Will your Honor bear with me a minute. What mystifies me is this; he keeps constantly referring to the journal as a clearing account or embodying clearing accounts, and yet we are led to believe that the summary payroll book is a clearing house for labor. That is the idea.

The Master: Here is a picture that I get. 5797
He gets a charge of a dollar for labor, half of which is for the repair of a retort and half of which is for carting some material somewhere. Fifty cents is charged in an account which he keeps on his books for "Repairs and Retorts".

The Witness: All right, your Honor.

The Master: Fifty cents is charged to cartage account. If you look at that cartage account you will find among these various items, 50 cents, making a total charge to the cartage account. Then that cartage account is dealt 5798
with in the journal and this account is again described in the ledger.

The Witness: You have it, your Honor.

Mr. O'Brien: It is a very simple matter, but the witness might have answered my question when I asked him that.

The Witness: Not the way you asked it.

Mr. O'Brien: Whether one was supplemental to the other or whether it was exclusive of the other.

The Master: That is the trouble with it. The witness here is an accountant. His mind
is trained in accounting terms and when you 5799
talk of something being supplemental to something else, it does not appeal to him as being correct from an accountant's standpoint and you immediately feel that he is trying to avoid your question and he immediately feels you are trying to ask something that you have not made clear and he does not

5800 understand, and that is why I am trying to straighten it out.

Q. Can you take an item of labor, Mr. Brundage, in there for 1918 and show it to us here in the summary payroll book?

The Master: Can you trace—putting it another way—one payroll item classified in your payroll sheet?

A. No, I cannot.

The Master: Through your books into the labor account?

The Witness: No, I cannot.

5801 The Master: Why not?

The Witness: Because the labor that comes from here (indicating) is charged to a clearing account like cartage——

Q. By "here" you are pointing to the summary payroll book?

A. I am pointing to the summary payroll book, charged to a clearing account such as cartage, and the cartage account is credited at a rate per hour for service rendered. You see, your cartage account, your Honor, includes the labor and repairs——

The Master: Show me an item classified as

5802 cartage.

(The witness indicates on book.)

The Master: Cartage, 291 Hester Street. Where is this item of $93 carried to?

The Witness: That is posted to the cartage account.

The Master: Let me see the cartage account to which that is posted.

The Witness: The ledger. That would be 5803
Ledger A, Section A.

Mr. O'Brien: Well, would it be in the journal, too?

The Master: Let me get at it my way. I want to trace one of these items through. This is for the month of December, 1918?

The Witness: Yes.

Mr. O'Brien: Will the Master bring this out by asking him a question and see if he can trace it?

The Witness: $528.75, for labor, posted on folio 545, amount $528.75. Here we are (in- 5804
dicating) pay roll from the street department, charged with the drivers, $528.75.

The Master: You have referred me to folio 545 of your operating ledger?

The Witness: Section A.

The Master: Section A?

The Witness: Yes.

The Master: Was there any occasion for journalizing that entry?

The Witness: There was.

The Master: Does that appear in the journal?

The Witness: It does. 5805

The Master: That cartage account?

The Witness: The entry crediting the cartage account for the work performed during the month of December.

The Master: Let me see that in the journal. Where would that be?

Mr. O'Brien: Are you sure that is in the journal?

5806 The Witness: Absolutely.

Mr. O'Brien: Does your operating ledger refer to any page in the journal?

The Witness: Yes, sir. It is journal 1209. All these charges have gone on during the month, and at the end of the month here are credits put through by this journal entry. Here is your credit of $20,332.22.

The Master: Mr. O'Brien wants to see this clearly. The result of all these credits to the cartage account—or are they debits?

The Witness: All these debits.

5807 The Master: In other words, through the month of December the cartage account had the benefit of various elements, labor and supplies and other things?

The Witness: Yes, sir.

The Master: And during the month that total of matters given in the cartage department or charged to them was twenty thousand odd dollars?

The Witness: Approximately.

The Master: That twenty odd thousand dollars appears in the journal as debited to the cartage account?

5808 The Witness: Credited to the cartage account, yes, sir.

By the Master:

Q. Credited to the cartage account?

A. Yes.

Q. At page 432.

Q. Now you have got to distribute that $20,000 again?

A. Yes.

Q. To your journal? 5809

A. Yes, sir.

Q. So you itemized and distributed that $20,000 over the various accounts shown in your journal?

A. We do.

Q. Then from that it goes back into the ledger?

A. Posted in the ledger.

Q. Through the various accounts?

Mr. O'Brien: Let me take it up right there, your Honor.

Q. Cartage you had on the pay roll in what amount?

The Master: $528.75. It appears from the 5810 paper offered in evidence.

Q. Is that part of the cartage that is recorded in the journal on page 432?

A. That is one of the items, yes.

Q. And in the journal at 432, which is for December, 1918, isn't it?

A. Yes.

The Master: That is correct.

Q. What is the total cartage account in the journal for December, 1918?

The Master: Read it from page 432 up there.

A. $20,332.22.

The Master: That is correct. 5811

Q. What is it in the pay roll summary?

The Master: That includes this item of $528.75, Mr. O'Brien.

Mr. O'Brien: Where is it?

The Master: In the ledger.

Mr. O'Brien: Where is it in the journal?

The Master: In the $20,000. Don't you understand that?

5812 Mr. O'Brien: He has got that $20,000 as redistributed down here, your Honor (indicating).

The Master: That is correct.

Q. And it is distributed, the labor, over repairs to mains, work on the consumers' premises, meter and installation work?

A. Charged to those various accounts, yes.

The Master: That is correct—and credited to the cartage account.

Q. Isn't cartage a separate item from repairs on the pay roll summary, a separate account from repairs to boilers or repairs and accesories?

5813 A. A separate account, yes, of course it is. It is a clearing account.

Q. Work on consumers' premises?

A. Yes.

Q. Repairs to mains?

A. Yes, a separate account.

Q. And there is none of that here?

A. None whatever.

Q. You say the amount of the cartage on the summary payroll, $528.75 is not included in any other item on the pay roll for that month?

A. $528.75 is not included in any other account?

5814 Q. Yes.

A. I so say; it is not included; certainly not.

The Master: I think that is clear; it is perfectly clear to me.

Mr. O'Brien: He says, your Honor, that labor runs to each one of the items of this cartage account in the journal.

The Master: I understand it thoroughly. I am sorry you do not.

Mr. Ransom: I want to ask one question 5815
on redirect.

The Master: I do not think Mr. O'Brien is finished yet.

Q. Does anybody make it a practice of going over the summary pay roll, checking it up, viseing it in any way?

A. I have already testified, Mr. O'Brien, that we get a confirmation of the summary of the pay roll by confirming that the aggregate amount of the classifications is in accord with the amount of pay roll itself for which money has been paid out.

Q. How are the executives' salaries handled in 5816
this general pay roll, under the title "General Office"?

A. General Offices.

Q. And from what record do they come into this account?

A. From the pay roll itself, classification is made on this record for the purpose of the accounting department.

Q. Is there a pay roll for the executive offices?

A. There is. That is a pay roll for all the men of the company who are paid on a monthly basis, and that includes the officers of the company.

Q. Is that pay roll one of the books that has 5817
been offered in evidence already?

A. The pay roll?

Q. Yes.

A. No, sir.

Q. Have we that before us?

A. No, you have not.

Q. That was not produced with the other pay rolls that have just been offered in evidence?

5818 A. You have no pay rolls in evidence, Mr. O'Brien.

The Master: This is a pay roll summary. It is in the pay roll summary.

Mr. O'Brien: Didn't you offer in evidence the pay roll book?

Mr. Ransom: No, the pay roll summary.

The Master: You offered one for identification.

The Witness: That was the time book, the time book for two stations, Mr. Chambers asked for.

5819 Mr. O'Brien: No, I mean the books that were down here the other day and were brought up to the room.

The Master: No, Judge Ransom said he had a pay roll summary book he wanted to introduce, and that is this one, but before I let it in, I wanted to identify it by the witness. In this book the very first entry in January is of the general offices $10,000, which I understand includes the executive officers, doesn't it?

The Witness: Yes.

By Mr. Ransom:

5820 Q. The pay rolls are annexed to the original vouchers, are they not?

A. In respect to this particular pay roll?

Q. What is done with the original pay roll with the different certifications, I mean the sheet in this form which I now show you (handing witness).

A. The original pay rolls are all on file in the general offices.

By Mr. O'Brien: 5821

Q. They are in bound books, loose lead books?

A. Yes, they are all on file in the general office, every pay roll.

By Mr. Ransom:

Q. Is this the form of it?

A. That is the form of pay roll for all men paid on an hourly basis.

Q. With the different certifications shown thereon?

A. Yes, sir.

Q. And those are on file in the company's office?

A. They are.

By Mr. O'Brien: 5822

Q. Are the pay rolls of the officers kept separate from the pay rolls of others?

The Master: He has already answered that. They are in all the monthly pay rolls.

Mr. Ransom: And they are brought into the invoices, approved by the executive committee, Exhibit 198, shown for example on page 11?

The Master: Judge Ransom, you are interrupting Mr. O'Brien. I do not think there is any more you want to ask. I think you ought to have the originals of these, and not a sample.

Q. The payroll book covers General Offices and 5823 the general officers are covered by a payroll and they are kept on file by books, are they?

The Master: You need not answer the question; it has been fully covered.

Mr. O'Brien: That is preliminary to what I wanted to ask him.

Q. What do you do with special labor, or is there any special labor?

5824 A. I will have to ask you to define special labor.

The Master: No, is there such a thing or is there any other different kind of labor than what you have described coming in on these sheets?

The Witness: No; all the payrolls of the company are summarized on these sheets that are here exhibited.

Q. Do you have any special labor, contract labor?

A. Under contract?

Q. Yes.

A. We would make a contract with some con-
5825 tractor who would employ labor, yes.

Q. Have you done that during 1918?

A. Why, yes, we probably have.

Q. Have you got time books that cover the amount of work done by them?

A. Certainly not, not in my department.

Q. How do you check up the work that is done under special labor contracts?

A. If there were any contracts with a contractor which involved the labor, the engineer of construction through his field men would verify the accuracy of the contractor's charge for the labor that he employed.

5826 Q. Outside of cases of construction work which may involve labor, have there been any instances during the year that is covered or referred to in the proof already offered, 1918, where special labor was hired?

The Master: What do you mean, Mr. O'Brien, where special labor was hired?

Mr. O'Brien: I found, to illustrate, your Honor, that the Kings County Lighting Com-

pany had through a contractor a lot of labor furnished to it. 5827

The Master: If any such labor at all was employed by the Consolidated Gas Company, either men generally employed or men specially employed for a particular work, if they are day laborers or week laborers, they would go in on your payroll weekly sheets, on these regular tickets, wouldn't they?

The Witness: Every man that we would employ. This labor would appear here in this summary.

The Master: There is no such thing as a general or a special laborer? 5828

The Witness: I should say not.

Q. Then you don't know——

The Master: Wait a minute. Now, the only difference that there might be of labor rendering any service for the company, other than that what you have already covered in this pay roll summary book, is labor that might be employed by a contractor about some contracting work?

The Witness: And would come to us through a contractor's bill.

The Master: That is what I am trying to make clear. If a contractor had a contract to do a job. 5829

The Witness: Yes.

The Master: Furnishing the labor and material for a lump sum, then his bill would be for doing the job?

The Witness: It would.

The Master: If a contractor got a job on a

5830 cost plus basis, so that he had to itemize his cost of labor, then his bill would include a charge for labor?

The Witness: It would.

The Master: And a charge for material?

The Witness: It would.

The Master: And that kind of a bill would be in your sundry vouchers?

The Witness: It would.

The Master: Sundry creditors vouchers?

The Witness: It would.

The Master: And that voucher would have

5831 to be approved by your engineering department?

The Witness: It would.

The Master: That labor would not come in on your pay roll at all?

The Witness: It would not.

Q. Is there any instance of that kind in the year 1918?

A. I do not recall any percentage contract during the year 1918.

Q. How is your painting, say the painting of the holders? I noticed a number of men up in the Fordham station, do you keep a corps of

5832 painters, or is that done on a special labor arrangement?

A. We do keep quite a few painters, but whether they painted that particular job with contract labor or by our own pay roll labor, I don't know.

Q. There are a number of men working there, and you don't know how they are being paid?

A. No, sir.

Q. You don't know whether some one has con-

tracted to furnish painters and there is an allow- 5833
ance made with a percentage to the contractor?

A. I do not.

Q. Well, now, take other kinds of personal services, are they entered on the pay rolls, or are they covered by the separate——

The Master: What do you mean by other kinds of personal service?

Mr. O'Brien: Well, I mean special auditors, accountants, publicity agents, various representatives, I want to know how that is handled.

Mr. Ransom: I object to the question.

The Master: I am going to allow it in this 5834
form, if the Company should employ—bills rendered by counsel to the company don't come in on any pay rolls.

The Witness: They do not.

The Master: They are not considered as employees in that sense?

The Witness: They come through a regular sundry creditors' voucher.

The Master: If the company should employ a man for the purpose of making a special inspection of the plants for some reason that nobody knows about now, would it come in on the pay rolls, or would it come in on the special 5835
sundry creditors' vouchers?

The Witness: It would come in in the shape of a bill from the man, and would go through our sundry creditors' accounts.

The Master: I won't permit any further questions, Mr. O'Brien.

Q. How is Mr. Livingston covered by the pay
ll?

5836 The Master: I said I would not permit any further questions.

Mr. O'Brien: Well, I present the question.

The Master: I said I would not permit any further questions because such vouchers have appeared and the charges have appeared in the books, and they show how they are paid.

Mr. O'Brien: They don't show how they were paid.

Mr. Ransom: Yes, they do, approved by the president; you brought that out on the direct examination.

5837 Mr. O'Brien: Well, there are some items of payments made on executive order for services, and they would go through—the bill would be connected with a voucher.

The Master: You need not answer that, that is already covered.

Mr. O'Brien: I don't know that your Honor brought that out about the auditors, public accountants like Patterson, Teele & Denison.

The Master: You have thoroughly exhausted the character of book now being offered. Based upon the evidence already submitted, if any accounts did a piece of work for

5838 this company, they rendered a bill for it, and it is approved by one of the officials having jurisdiction, and it will be found in the sundry creditors' vouchers. Am I correct, Mr. Brundage?

The Witness: Exactly so.

The Master: Now, you have exhausted it, Mr. O'Brien; I won't permit anything further.

Q. Is there any other sundry or personal serv- 5839
ice account that you have?

Mr. Ransom: I object to that as being indefinite and incompetent, irrelevant and immaterial.

The Master: I will let him ask the question, which I understand to be is there any other book in which entries are made of payments or charges made for any kind of services, labor drawing special pay or otherwise, except this pay roll summary and the sundry creditors' vouchers.

The Witness: There is no other means.

Q. No other what? 5840

A. No other means of paying except through this record or through a sundry creditors' bill.

Q. Is there any other record kept?

The Master: That has been asked.

Mr. O'Brien: That was my question, not any means of paying out.

The Master: Well, he has answered. There is no other record, is there?

The Witness: There is no other record.

Q. None that you know of?

A. There is no other record except this payroll record and the sundry creditors' bills. 5841

The Master: Oh.

The Witness: Or petty expense vouchers.

The Master: Or sundry creditors' bill?

The Witness: Yes, or sundry creditors' bill.

Q. Taking petty expense vouchers, Mr. Brundage, is there a limit to the amount that might go through that system?

A. Each of the superintendents of each depart-

5842 ment has a small petty cash fund, a few hundred dollars, for the payment of carfares and extraneous telephone calls.

Q. Well, is there any limit on his authority—on the amount of the expenditure?

A. If there is any limit I don't know of it. If any considerable amount came in, why, the auditor would protest at once that he was paying too much out of his petty cash. The amount is very inconsiderable that is left with them. They keep a common fund, your Honor.

Q. I ask again, your Honor, whether there was
5843 an audit made of their payrolls in the year 1918?

A. Every payroll is audited.

Mr. Ransom: By whom, by him?

Q. By the company.

The Master: He has already testified to that.

The Witness: Every payroll is audited.

Q. Well, do you mean the audit is made before it goes out, or is there an audit made at the end of the year of all of the books of the company?

A. There is.

Q. Don't you have an annual audit?

A. We have employed for a great number of years an outside firm to audit our accounts.

5844 Q. And they give you a report of their audit?

The Master: You need not answer that, it has nothing to do with this paper.

Q. And are those reports on file with the company?

The Master: You need not answer that.

Mr. O'Brien: Exception.

Q. Then that work is done by outside auditors?

The Master: You need not answer that.

Mr. O'Brien: Well, your Honor——

The Master: (Interrupting.) I am talking about this book that is being offered. 5845

Mr. O'Brien: I am talking about it, too, your Honor.

The Master: He has already answered.

Mr. O'Brien: There has been an audit made, and here we have got a book that hasn't got anybody's O. K., nobody to say these figures are correct.

The Master: He has testified that they have audits.

Mr. O'Brien: There is nobody under oath, your Honor, that verifies that book, that is what I am driving at. 5846

The Master: That is your objection to the book. Now, do you want to ask any questions, Mr. Chambers?

Mr. Chambers: Yes.

RECROSS-EXAMINATION BY MR. CHAMBERS:

Q. The auditor whose name you gave, Mr. Brundage, is he your subordinate, as the Master stated.

Mr. Ransom: I object to the question.

The Master: I will allow it.

Mr. Ransom: Exception.

The Master: What relation has he to you?

The Witness: I should say that he was on a parity with me. 5847

The Master: You are an assistant secretary?

The Witness: I am, sir.

The Master: And he is an auditor employed by the company?

The Witness: Yes, sir.

The Master: And in the case of a conflict,

5848 would you have authority to overrule him, or would it have to go to the executive committee?

The Witness: In case of any conflict, and I can hardly conceive that there would be such a case, because if I wanted instructions on a disputed point, I should go to my superior, and he would do likewise.

Q. Who is your superior?

A. Mr. R. A. Carter, Vice-president and Secretary.

Q. And who is his superior?

5849 A. I should say President Cortelyou.

Q. Now, the cashier—the monthly payroll is made up by whom, the cashier?

A. The general office monthly payroll.

The Master: That has been covered.

Q. Well, the cashier, is he your subordinate?

A. No, sir.

Q. Who is his superior?

A. He reports to the treasurer of the company.

Q. Now, are you the subordinate or superior of the treasurer of the company?

Mr. Ransom: I object to that, your Honor. I object to the question as asking one man to

5850 comment upon the relative rank and relative position and relative authority of various other persons in the company.

The Master: I will let him ask it on the theory that Mr. Chambers has in mind. As between you and the treasurer of the department, is the secretary superior or of equal rank to the treasurer?

Mr. Ransom: Allow me an exception to the 5851
ruling?

The Master: Yes.

The Witness: Is the secretary superior to the treasurer, that is your question?

The Master: Yes, or of equal rank.

Mr. Chambers: No.

The Witness: Well, what is the question?

Q. Is the treasurer your subordinate or your superior?

A. Neither.

The Master: He is in a different department?

The Witness: Different department entirely. 5852

Q. What is the cashier's name you spoke of a minute ago?

A. Our general office cashier is a man by the name of Gerard, who is now away on sick leave.

Q. The superintendents of the plants, are those your subordinates?

Mr. Ransom: I object to the question.

The Master: I will let him ask this question, I assume they are in a different department.

The Witness: They are, your Honor: The superintendents of the plants report to the engineer of manufacture and are responsible to 5853
him. The engineer of manufacture is their superior.

The Master: He is in a different department from you?

The Witness: Entirely different from me.

Q. You are not their superior?

A. No, sir.

Q. Nor are they your subordinates?

5854 A. I would say we have no connection, so far as authority is concerned.

The Master: These books here that he has identified were made by his subordinates.

Q. This book that is offered now in evidence is made up by your subordinates, is it?

A. Except in respect of the commercial department, in respect of which I have testified it is made up by the superintendent of each of the commercial offices.

Q. What subordinates of yours, naming them, make up this book, this payroll book?

5855 A. This is made up in the what is known as the Hollerith Department, or Payroll Department.

Q. I want to know—the Court says that is made up by your subordinates. Now, what subordinates make up this exhibit that is here?

The Master: Wait a minute. We will shorten your examination. The Court's statement that all of these books were made up by the subordinates of the witness was not entirely accurate. The Court has in mind the points being made by Mr. Chambers with respect of the treasurer's cash book being kept by an employee in the treasurer's department,

5856 and the fact that some of these sheets in this book now being offered and prepared and furnished to this accounting department by the branch offices and matters of that kind.

Mr. Chambers: My point is that you are trying to allow in evidence a book here and no one has been produced in charge of the department.

The Master: I know your point. Ask all

the questions you want that will help your point. 5857

Q. What subordinates of yours, giving their names, engaged in the work of making up this book now offered in evidence, having no identification mark that I know of, except what you call the pay roll summary?

Mr. Ransom: I object to the question as immaterial.

The Master: I will sustain the objection on the grounds that the names of the individuals are not at all important. The witness has already given us a very definite statement as to how the book is kept and who keeps it. 5858

Mr. Chambers: He has not told us who makes it up.

The Master: Oh, yes, he has told us the number of clerks they have.

Mr. Chambers: How many clerks worked on this?

The Master: There were fifteen girls working in the Hollerith department, and two men, besides the chief there.

Mr. Chambers: Making the entries in this book?

The Master: Which were required in connection with that work. 5859

Mr. Chambers: I am just asking the entrants, the names of the men who wrote, the scriveners who did the writing.

The Master: I will let him state how many there are.

The Witness: Do you want me to identify the handwriting in this book?

5860 Mr. Chambers: I want you to tell if it is made in your department.

The Witness: It is made in the department over which I have jurisdiction.

Q. And who are the men who wrote in the book?

A. I am unable to identify the handwritings.

Q. How many different men wrote in it?

A. I have testified that in that Hollerith department there is a chief clerk and two——

The Master: He means who actually wrote in this book.

A. Well, whoever was available to do the work
5861 at the time it was made up, counsellor.

The Master: That is all I am going to allow. Of course, he doesn't know.

Mr. Chambers: I think it sufficiently appears now, and we make the same objection we have made before.

The Master: The objections heretofore made to the receipt in evidence of Exhibits 188 to 200 are now repeated with reference to this book called the pay roll summary. The Master rules that upon the ground already stated, he will receive the pay roll summary for what it is worth.

5862 Mr. Chambers: We take an exception.

The Master: An exception is granted to all defendants.

The pay roll summary was then received in evidence and marked Complainant's Exhibit 204.

Recess.

 5863

Mr. Ransom: Subject to what I stated before, that I shall have to recall Mr. Brundage later for the production and identification of certain books, and for examination in connection therewith, I withdraw Mr. Brundage from the stand.

The Master: His cross-examination is suspended.

Mr. O'Brien: While we are at this point I want to say what I attempted to say before Judge Ransom started to have his books marked in evidence, and that is that I made an oral request of Mr. Goetz, associate counsel, that we be given permission to go into their office, and see books, within reasonable hours, the records as they stand, and not be compelled just to occupy a room and to take such papers as may be asked for. 5864

The Master: Well, you want to have in mind the operation of their business. What books do you refer to particularly and what office?

Mr. O'Brien: That would be done agreeably to their convenience, and not oppressively, but to give us access so we can go and see what records there are. 5865

The Master: What do you have in mind particularly?

Mr. O'Brien: That would develop after an examination of the books.

Mr. Ransom: What they want is to rove around, subjecting the company employees, as has already been done, to the utmost outrageous treatment I have ever known of in

5866 connection with a judicial proceeding. They want an opportunity to rove from room to room, from employee to employee, from paper, to paper, from drawer, to drawer, delving, bullyragging, bringing out whatever they may find.

Now, any books, any record, any voucher, any paper of any kind is open to them, as has been the case right along; but the treatment to which company employees have already been subjected by Mr. O'Brien, will not be tolerated, and there will be no permit given by the company for the continuance of that

5867 sort of thing. I have affidavits——

Mr. O'Brien: I want to put a general denial on the record of the statement just made by counsel. The purpose of my request, your Honor, is this, that up to the present time there has been a room assigned. You have noted the testimony of the witness throughout, to the effect, "We gave them all they asked for". Now, we don't know what books we may ask for; we want to go into their office and see such books. Of course, it is to be assumed it will be done without inconveniencing anybody, and without inconveniencing the company, and done within

5868 reason and done within reasonable hours. But, the situation is developing just such as I experienced in the case of the Kings County Lighting Company. They kept insisting right from the beginning of the trial that they gave us what we asked for. Naturally, a man making an investigation like that does not know just what particular kinds of books they have, and the books were not disclosed until

we got into cross-examination and found for the first time that they existed. Now, this can be done, and it ought to be understood that we will have that privilege. If it is abused in any way, they can cease to do it, or call the matter to the attention of the Master, but that should be their open-handed way of handling the situation, not giving us an upper chamber in that building and saying, "We will give you any book you want". 5869

Mr. Ransom: Or any voucher, or any record or anything at all.

Mr. O'Brien: That presupposes that we know all about the system of running their business. 5870

Mr. Ransom: You can tell from the books that are here just what records you want.

Mr. O'Brien: You cannot; there are a great many things, and the privilege of going in should be accorded us, and as I said, if there is anything to criticise, that is not within reason, if it is not done in a proper way, objection can be made and the Master's attention called to it and some other arrangement made.

The Master: I do not think I want to make any direction as to the method of giving access to their records. I think that for the time being you ought to exhaust your efforts in the manner suggested by the Gas Company. Apparently they have assigned some office space there, with a man in charge, and you can call for all the vouchers, pay rolls and books of the various plants. After you have exhausted that, you can make such requests in writing of them, for leave to go through certain sections of their office or plants, and see what they do about it. 5871

5872 Mr. O'Brien: May I add to what I have already said, that they are constantly in touch with our work. It is done really, under the present system, so they know when we get a book and when we give it back, and we are not given that freedom of examination that we ought to have.

The Master: What harm can come to you if they know what you are doing?

Mr. O'Brien: I do not know how much harm could be done by it.

Mr. Ransom: They ask us to turn over to them the 1918 book or 1906 book, to Mr.
5873 Frank's staff. He has been here for the last few days in consultation with Mr. O'Brien and has charge up there of the work as head accountant for the defendant. Mr. Frank wants all the 1906 payrolls, they are brought up to him. There may be a thousand, maybe fifteen hundred documents. They say, We want the thousand vouchers in relation to street improvements. They are brought up to him. They have been brought up to him in lots of several hundred at a time on repeated occasions. Mr. Hein, who also represents the attorney general, has had men up there for a
5974 considerable time at work on our tracings and blueprints and drawings with respect to buildings.

Nobody who has gone up there and who has really wanted to get information has had any real difficulty. There may have been particular delays at times; when they would ask for a thousand vouchers it has taken a little time to get them together. Or there have been little difficulties of that sort, but there has been no

real delay or difficulty on the part of any ac- 5875
countant or any engineer or any expert of any kind who had gone there and had wanted information in a candid way. If Mr. O'Brien will indicate at any time during his examination up there the general nature of what he wants, it will be brought to him. There are none of our men in that room. We do not keep any of our men in that room. They have those books, they have those vouchers. So far as we could prevent it, they can destroy them or do anything else. We put ourselves at their mercy. They are turned loose in these rooms, themselves alone, under the direction of their 5876
men from the accounting staff of the commission, and they have these vouchers, they have these books, they have these records from the works or branches or anything they want, and the fullest opportunity to do whatever they please with them.

Mr. O'Brien: Let me say right here, How are we going to know that these are not a separate set of books?

The Master: I do not believe the Court ever intended you should go up there to do detective work. If they have been perjuring themselves 5877
here, that is a matter for me to decide.

Mr. O'Brien: No, there is not a statement yet that would cover that, but what I am driving at is that cross-examination, as you will see, will develop records that have not been passed over and that we will not know about until we reach it in cross-examination, and their answer will be right through the case, "Why, your Honor, we gave them all they

5878 asked for." You will hear that reiterated from time to time.

The Master: After you turn up these books on cross-examination you may ask for them. I won't make any direction now.

ARTHUR W. TEELE, called as a witness in behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Teele, where do you reside?

A. 131 Riverside Drive, New York.

5879 Q. What is your business?

A. Public accountant.

Q. With what firm are you connected or of what firm are you a member?

A. I am senior partner of the firm of Patterson, Teele & Dennis.

Q. And where are the offices of that firm?

A. At 120 Broadway and 131 State street, Boston.

Q. Do you hold any official standing or are you a member of any associations dealing with this field of accountancy?

A. I am a certified public accountant of the State of New York and of the State of Ohio. I am a 5880 member of the New York State Society of Certified Public Accountants. I am a member of the American Institute of Accountants, and Chairman of the Board of Examiners.

Q. How long have you been an accountant?

A. I have practiced in New York since 1891.

Q. Will you indicate your experience as an accountant with reference to any special fields in which you have engaged and special branches of

work, or the principal work which you have done 5881
either alone or in conjunction with any firm?

A. Well, my experience has been very varied, as it must necessarily be, and extended over a period. I have examined accounts of all kinds of corporations, private individuals, estates, public utilities, railroads.

Q. Gas companies?

A. Gas companies, electric companies, traction companies.

Q. Have you worked for government bureaus and departments.

A. To some extent.

Q. Work for state or legislative commissions? 5882

A. I was engaged in 1904 by the District Attorney of New York County to make an examination of the Metropolitan Street Railway Company, to ascertain the facts with regard to certain charges that were laid before him. I was engaged in 1905 by the Stevens Legislative Committee to make an examination of the accounts of the Consolidated Gas Company for a period of two years, and as I recollect now I prepared statements for them covering a period of five years, those statements being used by the Legislative Committee and eliciting information from the Gas Company's offices, 5883
and the results of them being used by the committee in making its report and recommendations to the Legislature. I was retained by the Legislative Committee of New Jersey in an investigation made of the accounts of Jersey City, of the finances of Jersey City.

Q. Will you mention some of the other instances

5884 of work which you have done or experience which you have had as a public accountant?

A. One perhaps which is quite well known was an investigation which I and one of my partners made of the Catholic organizations in this city—of the charitable organizations in this city for the Catholic authorities, in 1911.

Q. Have you done anything in regard to the Chicago, Rock Island & Pacific Railway Company?

A. I have examined the accounts of the Chicago, Rock Island & Pacific Railway Company and its system lines on two different occasions.

5885 Q. For whom?

A. For bankers in the first instance and for a bondholders' committee in the second instance.

Q. That is in connection with the issue of bonds?

A. In connection with the issue of bonds.

Q. In what amount?

A. My recollection is that the bond issue was $50,000,000.

Q. Anything as to the Southern Railway Company?

A. My firm have been the auditors of the Southern Railway Company since its organization in 1894,—since its reorganization. I have had per-

5886 sonally under my direction the audit of its accounts annually since 1901 and in later years the affiliated lines or system lines.

Q. Can you mention any other large companies in the public utility field for which you have been for some years the auditors?

A. The American Telephone and Telegraph Company, the Adams Express Company. We were

for many years the auditors of the General Elec- 5887
tric Company and many other corporations.

Q. Did you ever make any examination or audit as to the accounts, finances and affairs of the gas and electric companies in Boston? If so, when?

A. I examined the accounts of the Brookline Gas Company in Boston, in 1893, I believe. I examined the accounts of the Elmira Gas & Water Company, the Rochester Gas Company.

Q. The Bay State Gas Company at any time?

A. The Brookline Gas Company, which was one of the original companies in Boston. I examined the accounts of the Duluth Gas & Water Company, 5888
the New Orleans Railway and Light Company, which included the gas operations in that city; the Spanish American Light & Power Company, which included the operations of the traction electric lines in the city of Havana; the Baltimore Electric & Traction lines, and a number of others throughout the country that I do not recall just at this time.

Q. Have you recently done any work in the field for the Federal Government? If so, what?

A. In the accounting field?

Q. Yes.

A. Yes; in 1917 I was a member, and still am 5889
of the War Committee of the American Institute, which acted as a sub-committee of the General Munitions Board at Washington, and as a member of such committee, I assisted in making the plans for creating the organization for the Government in connection with the construction of all the cantonments and army camps; and as a member of that board I did other accounting work for them.

5890 In 1918, at the request of General Williams, the Chief of Ordnance, of Washington, I undertook to organize, or to reorganize, the then existing method of informing the Ordnance Department as to the progress of all work, contracts, under the Ordnance Department.

Q. Is that all?

A. No. From May, 1918, until December, 1918, I spent practically my entire time in Washington in the Ordnance Department doing that kind of work.

Mr. O'Brien: From May to September, 1917?

5891 The Witness: From May, 1918, to December 20, I think it was, 1918.

The Master: Is there any question about Mr Teele's competency as an accountant? We are only wasting a lot of time on this, getting the history of his life.

Mr. O'Brien: I think he ought to be examined as to his connections.

The Master: All right.

Mr. O'Brien: I am not willing to subscribe to the proposition that a C. P. A. is infallible on questions of accounts.

The Master: Oh, nobody does. The mere

5892 fact that you——

Mr. O'Brien: Mr. Teele may not have that notion about the C. P. A. himself.

The Witness: I do not. We are all human.

Mr. O'Brien: Some men think the C. P. A. is in the seventh heaven of infallibility.

The Master: The mere fact that a concession might be made that a witness was qualified to testify as an accountant would not mean

anything more, and we will not waste any 5893
more time on something that is a self-evident fact.

Mr. Ransom: I think I will finish the examination.

Q. You have also been engaged in auditing work for various commercial enterprises in addition to those which you have mentioned?

A. Very many.

Q. Well, could you give any approximate idea as to the extent of the expenditures or receipts of corporations whose records and accounts you have audited during the past five years?

A. I should say it would run into the hundreds 5894
of millions of dollars.

The Master: I don't think I will permit any further examination for the purpose of qualifying, unless his qualification is attacked by the inquiry made by the other side.

Q. In the latter part of 1918 were you employed by the complainant, Consolidated Gas Company, and if so, for what purpose?

A. I was employed in the latter part of 1918.

Q. In what month?

A. The last week in December I called upon Mr. Carter for the first time. 5895

Q. And what instructions were given you respecting your employment?

A. Mr. Carter at that time asked me, in substance asked me, if I was at liberty to take up an examination of the accounts of the Consolidated Gas Company and its affiliated companies, and make such examination of their accounts and records as would satisfy me in regard to the in-

5896 tegrity of their accounts and enable me to prepare such statements as might be necessary to show their revenues and expenses from the gas business, or such other statements as might be required in the conduct of the case which they were considering.

Q. Was anything said about the audit of the books and accounts?

A. I don't—I think he used the word "audit"—make such an audit.

Q. Was that the first time that you had talked with anyone connected with the complainant company respecting your employment in this capacity?

5897

A. It was.

Q. And you had done no work in connection with this matter before that time for the complainant?

A. I had not.

Q. Nor any of your staff or any man in your firm?

A. Or anyone connected with our establishment, so far as I know.

Q. What did you proceed to do after that?

Mr. O'Brien: Just a minute, Judge. With reference to accepting the witness as an expert accountant, your Honor, it may appear later on that we may want to examine in that. It may not be necessary, but I would like to reserve that right, if we see fit later on to examine him.

5898

Mr. Ransom: If there is any question of his qualifications, I want that settled now.

Mr. O'Brien: In other words, I don't want to waive that right by silence at this time.

Mr. Ransom: If you question the witness'

qualifications as an accountant, I submit that 5899
ought to be determined now.

The Master: I think so. If you have any doubt as to Mr. Teele's qualifications, you proceed to cross-examine him on them now.

Mr. O'Brien: Well, I thought, your Honor, that I would reserve that right. A good many questions may come up on cross-examination, and we may take care of it there.

The Master: No, I do not think we want to waste hours in the examination of this witness as to facts he is supposed to testify about if he is not qualified. You better examine him 5900
now as to qualifications, if you have any doubt about it.

Mr. O'Brien: I would like the record to be complete, your Honor. I don't like to be unreasonable about the matter. I would like the record to be complete on that question.

The Master: I stopped Judge Ransom asking any more questions.

Mr. Chambers: Suppose we do ask him some questions.

The Master (Continuing): Because I felt that Judge Ransom had gone far enough in 5901
direct questions to qualify the witness. Now, it may well be that any questions that you may now ask him may destroy his qualifications. If so, and Judge Ransom can restore them, I will let him do it on redirect, but if you think this witness is not qualified to testify as to an inspection and analysis of these books of account, let's have it now. Mr. Chambers, you proceed.

5902 CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Teele, have you ever prepared any data heretofore in any of the matters you have related, where rates were involved in gas companies or railroads?

A. The statements which I prepared for the investigation made by the Stevens Committee, was the basis of the establishing of the present rate.

Q. Of the Stevens?

A. The Stevens Committee.

Q. Of the N. Y. Legislature?

A. The N. Y. Legislature, the Joint Legislative
5903 Committee appointed in 1905.

Q. You mean Senator Stevens?

A. Senator Stevens was Chairman of the Committee, and the committee was known as the Stevens' Committee.

Q. He was afterwards Superintendent of Public Works, was that Stevens?

A. I believe so.

Q. You mean when the 80-cent rate was fixed?

A. Yes, sir; in 1905.

Q. This very rate for this gas company?

A. Yes, sir.

Q. What did you examine, the records of this
5904 company alone?

A. I examined the books and accounts of the Consolidated Gas Company.

Q. And what other companies?

A. My recollection is that I did not then examine any other companies.

Q. Just the Consolidated?

A. Just the Consolidated.

Q. And you made a report, did you?

A. I prepared schedules which were submitted 5905
to the committee and used by Judge Hughes in his interrogation of the witnesses appearing before the committee.

Q. And was it partly as the result of your efforts that the eighty cent gas law—was it on the recommendation of some of your figures that the eighty cent law was placed upon the books?

Mr. Ransom: I don't know that the witness can answer that.

The Master: Objection sustained.

Q. You made some recommendation, did you not?

5906

A. I did not.

Q. You just prepared figures?

A. I prepared schedules which were submitted to the counsel employed by the committee, and which were under consideration by the committee, and which I believe were embodied in the reports of the committee to the Legislature.

Q. Did you make a minute examination of the records of this Consolidated Gas Company at the time yourself?

A. I made a considerable examination. I do not know what you mean by minute.

Q. Did you go over their books for a period of 5907
years?

A. My recollection is now that I made a considerable examination for the period of two years, and that based upon the results of that investigation of two years I prepared schedules covering five years.

Q. Was that all done under your personal supervision and direction?

5908 A. It was.

Q. Have you worked on any other rate case except that?

Mr. Ransom: That was not quite a rate case, that was a legislative investigation.

A. I don't think I have ever worked on any other rate case, except that I have done work for railroad companies in preparation of schedules to be used in connection with rate cases.

Q. In your other examination of the Consolidated Gas Company's records did you ascertain what it cost them to make gas, from their records?

5909 Mr. Ransom: At that time.

A. I have not seen those schedules since the investigation was completed——

Q. Is it in your recollection that you submitted figures on the cost of gas?

A. My recollection now is that I made an examination which showed the cost of the production of gas, the distribution of gas, and general expenses, or all other expenses other than those divided into those two schedules.

Q. Do you remember about how many men you had at work?

A. I have no recollection; I had some assistants
5910 with me.

Q. Half a dozen or so?

A. I think not.

Q. How long did it take you to go over the books that time?

A. My recollection now is that the total time that I was employed in that investigation was in the neighborhood of seven or eight weeks.

Q. On their books?

A. In connection with the work done for that committee. 5911

Q. How long were you on their books this time?

A. On the books of the Consolidated Company?

Q. Yes, and affiliated companies?

Mr. Ransom: I don't know that this question has anything to do with his qualifications.

The Master: I will let him answer it. It doesn't make any difference whether he answers it now or later.

A. I and my staff have been engaged since the first week in January, 1918, in an examination of the accounts of the Consolidated Company, and other companies for which I was engaged. 5912

Q. Are you through with that examination?

A. I am not.

Q. You are still at it?

A. You mean am I through with the work for which I received instructions?

Q. Yes.

A. I am not.

By Mr. O'Brien:

Q. Did you say January, 1918?

A. January, 1919.

By Mr. Chambers:

Q. Are you partially through? 5913

Mr. Ransom: I object to that question.

The Master: Objection sustained.

Q. Is this work under your personal supervision?

The Master: What work?

Q. With the Consolidated?

Mr. Ransom: I object to the question. It hasn't anything to do with his qualifications.

The Master: Sustained.

5914 Mr. Ransom: I shall bring those facts out in a few moments.

Mr. O'Brien: If you don't, we will.

Q. These other cases that you spoke of, were these all under your personal supervision, or under the supervision of your partners?

A. Which ones?

Q. You spoke of a lot of them.

A. Those cases which I have enumerated have all been done under my direction, or in conjunction with one of my partners. They may have been done under the joint supervision of myself
5915 and one of my partners, but practically all of them have been done under my personal supervision and direction.

Q. How many years have you been an accountant?

A. I have been practicing in New York since 1891.

Q. And there wasn't any provision for certified public accountants then, was there?

A. There was not; the law was passed in 1896.

Q. Did you try an examination?

A. For what?

Q. Certified public accountant?

5916 A. When?

Q. Didn't you say you were a certified public accountant?

A. Yes.

The Master: The law covered in those who had practiced for a period of years.

Q. How were you admitted, automatically, or by examination?

A. By issue of certificates to men who had been 5917
in public practice for a given number of years.

Q. Then you were admitted without examination?

A. Without examination.

Q. When were you admitted?

A. I hold certificate No. 13, I believe, in New York State.

By the Master:

Q. Where did you study accountancy, Mr. Teele?

A. I commenced the study of accountancy when I was entry clerk in a wholesale hardware house 5918
in Boston.

Q. When was that?

A. 1887.

Q. Where did you study?

A. I studied it in the text books which were then available, notably Bryant & Stratton's text book on bookkeeping.

By Mr. Chambers:

Q. You are not a graduate of any technical school?

A. I am a graduate of the Eastman Business College, to which I subsequently went to extend my knowledge of bookkeeping. 5919

By the Master:

Q. Where is the Eastman Business College?

A. Poughkeepsie.

Q. When did you go there?

A. 1890.

Q. How long did you attend that school?

A. Ten weeks.

Q. What course did you take up?

5920 A. The prescribed business course at that time. I had a fair knowledge of book-keeping. I went there to see if I could attain any more information or knowledge in regard to it.

Q. And did you get instruction in those eight or ten weeks in reference to bookkeeping?

A. I think I did.

Q. Was that part of the course?

A. That was part of the course.

Q. After you left Eastman's business college what did you do?

A. I went to work almost immediately for a
5921 public accountant then practicing in New York.

Q. What was his name?

A. William Trenholm.

Q. How long did you work for him.

A. I worked for him and with him until 1894.

Q. Did he practice in New York?

A. He practiced in New York.

Q. And you worked for and with him in the examination of books, and in the audit of accounts, and in 1894 you branched out for yourself?

A. No, I had been a partner of his prior to that time.

Q. Then what happened?

5922 A. In 1894 Mr. Rodney Dennis, who was also a partner with Mr. Trenholm and myself, organized the firm of Teele & Dennis, and separated from William Trenholm.

Q. How long did that continue?

A. Until 1898 or 1899, I am not sure which.

Q. Then Mr. Patterson came in?

A. The old firm of Patterson, Corwin & Patterson, who were practicing public accountants in New

York prior to that time, amalgamated with my own 5923
firm of Teele & Dennis, forming the firm of Patterson, Teele & Dennis, which has been in existence since May 1, 1900.

The Master: Anything else you want to ask?

Mr. Chambers: I think that is all.

The Master: Anything else you want to ask, Mr. O'Brien?

By Mr. O'Brien:

Q. Mr. Teele, before you went to work for the hardware store in Boston you attended some public school?

5924

A. I am a graduate of the high school in Watertown, Massachusetts.

Q. And then you went into business?

A. I went into business before I graduated. I went to work in a hardware store when I was thirteen years old, and I there kept books, as well as the other scullery work of the store.

Q. You have been present in court thirteen days hearing the trial, haven't you?

A. I don't know.

Mr. O'Brien: I will be as brief as I can, your Honor, I want to find out some of these things that brother Teele is engaged in.

5925

Q. Briefly summed up, the big cases with which you have been connected were the Stevens Investigating Committee, the work for the Chicago, Rock Island & Pacific, first for the bankers and then for the bondholders—that was two separate jobs?

A. Yes.

Q. Then the Adams Express Company, the General Electric, the company in Duluth, the New Or-

5926 leans Railways Company, the Electric Railways of Baltimore, the Federal Government work, and the work under General Williams. Would that seem to cover the particularly large pieces of work you have done?

The Master: You forgot the Brookline Gas Company.

Mr. Ransom: And the American Telephone and Telegraph Company, and a lot of others.

The Master: I don't think we get anywhere by summarization testimony, Mr. O'Brien.

Q. What kind of work was this, was this an
5927 audit in each case?

A. It was an examination of the accounts, sometimes more completely than in others.

Q. In some cases I suppose it was an audit?

A. Yes.

Q. In other cases the preparation of special schedules of some kind?

A. Yes.

Q. Does your firm do analyst work?

A. What?

Q. Analyst work, statistical work, or is it purely accountancy?

A. I don't know just what you mean by your
5928 question.

Q. You know Marvin Scudder?

A. I have heard of him.

Q. You know Mr. Batson?

A. I have heard of him.

Q. Perley Morse?

A. I have heard of him.

Q. Is your work pure accountancy or does it em-

brace other features involving part accountancy 5929
and part something else?

A. I do not know what you mean, Mr. O'Brien, by pure accountancy. The work which we do is the examination of accounts of all kinds, the preparation of schedules, the preparation of balance sheets, income accounts and all other matters which may pertain to accounts, of all kinds and for all purposes.

Q. Have you a pamphlet or statement that embraces the scope of your work, that you use?

A. A what?

Q. Have you a pamphlet or brochure or syllabus, 5930
or any statement that will show just the scope of your particular work?

A. No, we don't advertise.

Q. You never advertise?

A. No, anything more than our firm name.

Q. Did you appear in court in any of these cases you have referred to?

A. I do not recall that I did.

Q. The particular accounts or schedules that you got up, were they in most instances for some special purpose?

A. They were gotten up for a purpose, usually.

Q. I mean for a limited purpose, like the work 5931
done for the Stevens Committee?

A. I do not know what purposes they were put to.

Q. To illustrate what I have in my mind, you did some work in behalf of the bondholders?

A. Yes.

Q. Was that a general scrutiny of the books of the Chicago, Rock Island & Pacific for the purpose

5932 of protecting them, or was it purely in an advisory capacity, or what?

A. It was an examination of the complete accounts of the Chicago, Rock Island & Pacific Railway and its system lines to determine how much money had been expended for capital purposes.

Q. Were the results of your labors in that instance printed?

A. Typed? They were.

Q. Published? Are they in some public record?

A. That was not a public record. It was a report made for a private firm.

5933 Q. In the first instance where you worked for the Chicago, Rock Island & Pacific, were you employed by Mr. Reid?

Mr. Ransom: I do not know what that has to do with this case, whoever this gentleman Reid is.

Mr. O'Brien: I will put it in another form.

Q. Were you employed by the railroad company?

A. We were not.

Q. By whom were you employed?

A. We were employed by Speyer & Company.

Q. Of New York?

A. Of New York.

5934 Q. Did that embrace a general audit of the books of the company or was it some limited investigation into some branch of their accounts?

A. It embraced an examination for the purposes of showing just what I have stated, for the purposes of determining the amount expended for capital purposes over a period of years.

Q. That was the same kind of an examination

then, that you made for the bondholders after- 5935
wards?

A. No, that examination embraced more than a determination of the amount expended for capital purposes.

Q. Your work for the bankers, Speyer & Company, did not cover quite as much ground as it did for the bondholders, or the reverse?

The Master: No, he said it covered more ground.

Mr. Ransom: I object. It is quite immaterial.

The Master: He said it covered more 5936
ground, Mr. O'Brien.

Mr. O'Brien: I am trying to pick up the thread of the examination, if your Honor please.

The Master: I have picked it up for you.

Q. You are sure, Mr. Teele, that you did not appear in Court in any of these cases where you made these examinations?

A. My recollection now is that I did not.

Q. Is there any instance where you represented the public outside the Stevens Investigating Committee?

A. I represented the public when I acted for the 5937
representative of the public in making an investigation of the Metropolitan Street Railway Company for the District Attorney of New York.

Q. Yes, I had forgotten that. Was that in connection with a prosecution of some kind?

A. Yes, it was in connection with charges that were laid before the District Attorney in connec-

5938 tion with the Metropolitan Street Railway Company.

Q. You turned in a report to Mr. Jerome in that matter, covering your investigation?

A. That report was made public and published.

Q. In some official report?

A. It was made public by the District Attorney and was published in the public press.

Q. Do you know whether your report to the Stevens Investigating Committee was made public?

A. I made no report, no written report.

Q. Did you testify before them?

5939 A. Only so far as to identify schedules and to state that they had been prepared from the books of the Consolidated Gas Company. That is my recollection at this time. I have not refreshed my memory on the matter.

Q. You do not recall whether they were marked as exhibits in the investigation?

A. I do not.

Q. These schedules that you prepared?

A. I do not.

Q. But did you go on the stand to identify these schedules?

A. I did.

5940 Q. And those reports of schedules were made after investigation of the Company's books?

A. They were.

Q. Covering a period of from seven to eight months?

The Master: Seven to eight weeks, he said.

Mr. O'Brien: Weeks, yes.

Q. Did your work for the Government just consist in arranging systems of accountancy for the

war period, for the Munitions Board, or did you 5941
actually audit accounts?

A. I did not audit any accounts for the Government.

Q. Yours was advisory work?

A. A part of it was advisory and a part of it was directory work. Part of it was investigating work. The work done for the General Munitions Board in part was ascertaining from the records of the Quartermaster Department the situation with regard to different stores.

Q. Did that involve an investigation of accounts?

5942

A. It involved an investigation of records.

Q. Did it include accounts, or did it go simply to the system of reports?

A. It involved an investigation of the accounts kept by the Quartermaster Department as to their stores and the disposition of them, and to that extent I should say it involved an examination of accounts.

Q. In these other cases what did you do, in the case of the Brookline Gas Company, did you audit their accounts, or did your work just embrace some investigation of their plant?

A. I made an exhaustive examination of the 5943
Brookline Gas Company, as I now recollect, for my principals, who at that time, I believe, had held an option for the purchase of the plant or the purchase of the stock, and I made an exhaustive examination as to the results of their operations and the expenditure of capital for a number of years.

5944 Q. Well, does your firm embrace engineers, or is it all accountancy?

A. My partners are all accountants. We employ engineers, have engineers on our staff.

Q. You have quite a large staff?

A. We have.

Q. How many are in your employ now?

A. Possibly 125 to 150.

Q. And do you employ other men besides engineers?

A. One of my partners is a graduate chemist, as well as being a certified public accountant. We
5945 have employed other professional men.

Q. Have you done work for any corporations in New York other than those you have named?

A. Very many.

Q. Would you name some of them?

A. I don't think it is necessary that I should disclose here whom my clients are. Most of our work is confidential, and I have stated a number of accounts that we examined where our certificates are published and it is a matter of public record, and I do not think beyond that I care to give any information as to my business.

Q. But this is a matter—you are on the witness
5946 stand in an action, Mr. Teele, and I press the question.

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, I think it is perfectly proper for me to find out with whom the witness does business.

The Master: Not if the witness is not willing to state any other concerns he worked for.

the question will resolve itself into one as to 5947
whether he has qualified himself as an expert in the work that he has done.

Mr. O'Brien: But by working for these firms possibly he has disqualified himself.

The Master: Disqualified himself from what?

Mr. O'Brien: From testifying in this case.

The Master: How could he be disqualified?

Mr. O'Brien: That would remain to be seen.

The Master: Give me some possible instance of the disqualification of the testimony.

Mr. O'Brien: I don't think I have to go into 5948
that. I think I have a right to know all of his record.

The Master: Objection sustained. Next question. The question is, Is he a qualified accountant able to testify to books. He cannot be disqualified. He might be related to every officer of the company, he might be married to somebody's daughter, he might have done a million things, if he is a qualified accountant, his testimony can be taken as such.

Mr. O'Brien: Suppose, if I must go over hypothetical situations in order to justify my question, your Honor has asked me what might 5949
have happened. A great many things could have happened in his career. Supposing it should appear that his work was rejected, suppose he had testified in some matter or had done some work that might have resulted in its being rejected.

The Master: Ask him that.

Mr. O'Brien: The supposititious cases, I

5950 can't begin to imagine them, but making the statement he makes arouses our suspicion.

The Master: Well, if you think that because he may have been convicted of a crime he is not qualified as an accountant, you may ask him that. You can ask him whether any work he has ever done has ben rejected as being useless. I will not make him disclose his confidential communications with clients.

Mr. O'Brien: I think that is reasonable, but he has volunteered a statement and has opened the door I think, in the direct-examination, as
5951 an expert, and I think we are entitled to know just about all his career in connection with this kind of work.

The Master: No, I will stick to my ruling. I sustain the objection.

Mr. O'Brien: We might as well have it now as on cross-examination.

The Master: Did anybody ever charge you with breach of trust?

The Witness: They have not.

The Master: Have you ever been charged with disclosing information of clients that you had no business to disclose?

5952 The Witness: No.

The Master: Have you ever gone to jail for the commission of a crime?

The Witness: No, sir.

Mr. Ransom: Your Honor, the only fact so far found seems to be that he is not a professional witness.

Mr. O'Brien: There is no need of that. The investigation of corporations in this city might

have in some way disqualified him, and I in- 5953
sist, your Honor, I am perfectly within my rights in asking him for whom he has done work, for whom his firm has done work in this city.

The Master: I will sustain the objection.

Mr. O'Brien: He may represent interests that would disqualify him.

The Master: It could not. I don't care.

Mr. O'Brien: Your imagination works farther than mine.

The Master: I don't care what interest he had. He may be made a contingent fee on the 5954
result of this litigation. That would not disqualify him. I don't care what his interest in, adverse or otherwise.

Mr. O'Brien: That is a matter that can be covered in the general cross-examination.

The Master: It may be, but the question before me now is is this witness what he claims to be, a qualified certified public accountant of sufficient familiarity with books of account to be able to testify with reference to an investigation of them. That is all. It don't make any difference who he has worked for.

Mr. O'Brien: Now, your Honor, we have 5955
gotten off on a path I had not intended at all. I did not intend asking the witness any indelicate questions.

The Master: I know you did not, but there are two sides to the picture in an examination of this kind. A witness takes the stand, and he says I am an accountant, I studied at the Eastman College and I know all about books,

5956 and he stops there; and the other side submits him as a qualified expert, you have a perfect right to say, well, where have you done any work? Well, I have done it for Jones and Smith, and the Chicago, Rock Island and the Brooklyn Gas, the Stevens Committee, the District Attorney and some one else. Give me every one that you ever worked for. It is not necessary. If he has given enough to indicate, or that he is willing to depend on as indicating his qualifications, that is all I want, because if he has not indicated his qualifications as
5957 an accountant, then I won't take his testimony.

Mr. O'Brien: Your Honor is limiting the scope of our inquiry as to the qualifications?

The Master: Yes, at this time.

Mr. O'Brien: Even though we concede that on the record up to this minute he has shown qualifications, that is no reason why we should not ask him more questions, because we don't know what they may bring forth.

The Master: I don't want you to concede anything now. All I want to know now is whether you have any further questions touching qualifications.

5958 Q. Mr. Treadholm is still in the business, is he?

A. He is dead.

Q. Well, will you state the work you did for the Adams Express Company?

A. We audited their accounts, their annual accounts.

Q. Was that leading up to some particular act or project of the company, like the issuing of bonds?

A. For the certification of their balance sheets 5959
and income accounts.

Q. The same work done for the General Electric Company?

A. Yes.

Q. Or did your work for the General Electric Company have to do with some particular project, like the issuing of bonds?

A. For the certification of their balance sheets and income accounts as published annually.

Q. Do you do an income tax business, too?

A. Yes.

Q. Quite considerable?

A. We do. 5960

Q. I take it that it was matters of that kind that you might have had in mind as confidential?

A. Not confined to that particularly.

Q. But embracing that?

A. But any work that we might do for clients other than public companies where the certificates are published or reports made public, we regard as confidential work, and I do not feel at this time that I am permitted to disclose the work done for clients.

Q. I see. That clears the situation somewhat. We will assume then, or can we assume, that what 5961
you had in mind was work for private individuals, and not corporations?

A. Not necessarily individuals. A corporation may be a client as well as an individual. The work that we may do for corporations may be confidential for that corporation, just as much as if done for an individual.

Q. Do you mean public utilities then, when you

5962 say that you don't feel that you can disclose your relations?

A. No, I do not.

Q. With your private clients?

A. No, I do not.

Q. Still the work done for the Roman Catholic authorities was a matter of a private proposition, was it not?

The Master: He said it was made a public matter, that is why he mentioned it.

Q. Was it made a public matter?

A. I believe not.

5963 The Master: I thought you said that it was pretty well known, or the matter was pretty well known.

The Witness: It was well known to the extent that it was stated in the press that we had made such an examination.

Q. And by reason of that fact you felt justified in mentioning it today?

A. I did.

Q. Otherwise you would not have mentioned it?

A. Otherwise I should never have mentioned it.

Mr. O'Brien: Your Honor, I renew my objection to the witness' testimony as an expert.

5964 The Master: You don't think he is qualified?

Mr. O'Brien: My objection speaks for itself. I do not assent to his qualifications for the reason, one reason was that I have not been permitted to go further into his career.

The Master: In what respect?

Mr. O'Brien: I of course know it is reasonable enough to say that an expert on books must know something about books, although

the particular statistics or the work done by some firms that do this business, does not necessarily keep them familiar with that particular kind of work, I mean familiar with the details. Firms that embrace some utility work, a man may have started as an accountant, and he may have been away from the books for years, and even Mr. Teele's accountants—he may do the supervising work, have others doing the work for him, so that he is a little bit out of the business, although he is in this big firm. 5965

The Master: I will rule that the witness has been qualified as an expert accountant. 5966

Mr. O'Brien: I note an exception.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Teele, in regard to the Chicago, Rock Island & Pacific, was the examination you made for the bankers in connection with the issuance of the bonds, the same bonds as the examination for bondholders which you afterwards examined the same books for?

A. I don't quite get that.

Q. You made an examination of the Chicago, Rock Island & Pacific for some bankers. Was that in connection with the issuance of bonds? 5967

A. It was.

Q. And were they the same bonds that you afterwards examined the books again for as accountants for the bondholders?

A. The same issue of bonds was involved. There were other issues of bonds besides that one.

Q. Was your examination preliminary to the issuance of the bonds, or was the report that you

5968 made at that time, accountable for the issuance of the bonds, or were those bonds based upon your report so far as you know?

A. I don't know what conclusions our clients drew from the report made to them.

Q. It was after your report that the bonds were issued?

A. Yes.

Q. Did you ever do any work for the Bartlett, Hayward Company?

A. I have not.

Q. For the George A. Fuller Company?

5969 A. I have not.

Q. For Richard Deeves?

Mr. Ransom: I object to the question.

The Master: I will sustain it on the ground already stated, that I would not care if he examined books for everybody that ever did any work for the Consolidated. I do not think it bears on his qualifications.

Mr. Ransom: It has nothing to do with his qualifications.

Mr. Clark: Exception.

Mr. O'Brien: Will your honor let me divert a minute to ask a question on that? I take it

5970 that your view of the matter is that the preliminary examination of the witness as to his competency and qualification has to do purely with his capacity to handle figures, not as to his honesty, his connections and so on.

The Master: If there is any doubt as to the testimony that he gives, and you have any theory that it may be colored by reason of interest, that is general cross-examination. Proceed, Mr. Ransom.

By Mr. Ransom: 5971

Q. For whom was this investigation and examination of the accounts of the Catholic charitable institutions made by you?

The Master: He said for the District Attorney.

Mr. Ransom: No, not the Catholic institutions.

A. It was made at the request of the counsel for the Catholic organizations of this city, now Judge Philbin, and our report was made—I believe it was addressed to Mgr. Hayes.

Q. Now, Mr. Teele, going back to your conversation in which you were employed in the last week of December, 1918; what did you do after that? 5972

A. The first week in January I was in the office of the Consolidated Gas Company with one of my partners who was assisting me at that time——

The Master: You had better give us his name?

The Witness: Mr. W. H. Stumpfel. After going over the plan of accounting of the Consolidated Gas Company, the books kept, etc., I made plans for conducting an audit of their account, which in my opinion would satisfy me as to the integrity of the accounts kept upon their operating ledger, from which I might prepare such statements as were necessary or were called for. 5973

Q. When did you first commence this work of audit?

A. The first week in January, 1919.

Q. Where did you carry on this work?

5974 A. In the offices of the Consolidated Gas Company at No. 130 East 15th Street principally.

Q. And where else?

A. I have visited the plant offices, some of the plant offices, and some of the holder stations, and some of the branches; but the examination of accounts principally was done at 130 East 15th Street.

Q. Rooms were assigned to you and your staff for that purpose?

A. They were.

Q. On the 17th floor of the building?

5975 A. They were.

Q. You had a force of men working with and under you in this respect?

A. I did.

Q. About how many?

A. I had as high as 20, and perhaps as low as 8 at one time.

Q. Have you and this staff been at work practically continuously upon that since that date?

A. We have.

Q. Who were your assistants? Were they men of your own staff and of your own selection, or were they employes of the company?

5976 A. They were men of my own staff and of my own selection. As I have stated, one of them was one of my partners for part of the time. Others were men who have been associated with us for 15 or 20 years, and others for a lesser period.

The Master: Were any of your staff, so far as you know, ever employes of the Gas Company?

The Witness: Not so far as I know.

Q. Or of any of the affiliated companies? 5977

A. Not so far as I know.

The Master: By "affiliated companies" you mean what?

The Witness: I mean any of the companies that are associated with the Consolidated Gas Company, any of the gas companies producing and selling gas in Manhattan or The Bronx.

By Mr. O'Brien:

Q. That is not a subject that you went into specially when you came to hire these men, is it?

The Master: That is why I asked.

A. We do have a record of the past engagements 5978
of men.

By the Master:

Q. As I understand it, you have an employment record of some kind?

A. We do.

Q. So that you get a history of the men employed?

A. We do.

Q. Are you familiar with those records?

A. I refer to them from time to time when I think it is necessary.

Q. So far as you know these records do not dis- 5979
close that any of these men had anything to do with any of the gas companies?

A. I believe that none of them had anything previously to do with the Consolidated Gas Company or any of its affiliated companies, any more that I had myself.

By Mr. Ransom:

Q. This staff of men then that you have described was made up entirely of your own employees?

5980 A. Yes.

Q. Did you have any aid from members of the staff of the company in the production of books and records desired by you?

A. I did.

Q. Just what did they do for you?

A. They produced books and records as called for, and furnished me with the information I asked for, and when asked for.

Q. They brought books and vouchers and the like to the rooms where you were working?

A. When I called for them.

5981 Q. How much of your own time, since the beginning of this audit in January, 1919, have you personally given to this work?

A. The first two months part of my time; since then almost all of my time has been given continuously to this work.

Q. And you have been in constant and direct personal contact with all phases of it?

A. I have.

Q. And it has all been under your direction?

A. It has.

Q. Would you say anything as to the qualifications and experience of any of the men who were

5982 associated with you and who were under you in the making of that audit?

Mr. O'Brien: I object to that question as incompetent, irrelevant and immaterial. It calls for a conclusion from the witness.

Mr. Ransom: He may state who they were, and what their experience has been.

Mr. O'Brien: We will have them on the stand and they can tell it themeslves. Your

Honor, I object to it. I think it is improper 5983
to ask this witness to characterize his own employees?

The Master: I think you are right as to the part of the original question, which asked him to characterize it. But, I will let him state as to these men within a reasonable limit, mentioning some of them, as to what experience he knows they have had from personal knowledge as to what work he has seen them do.

Mr. O'Brien: Well, it is really asking the witness——

5984

The Master: To qualify these other men.

Mr. O'Brien: Yes. We ought to have them on the stand when they come to verify the records they have gotten up. We will have them here, and we will ask ourselves some questions that may bring out the things he has asked the witness to give.

The Master: I will allow the witness to give the men and their names and the experience he knows they have had, and how long they have been with him and what they have been doing for him.

Mr. O'Brien: Exception. 5985

Q. Can you mention these men and tell anything you know about work which they have done and experience which they have had?

Mr. Chambers: May I be recorded as having an objection? We are entitled to have them brought here.

The Master: Yes, and an exception.

A. W. H. Stumpfel, who is one of my partners,

5986 and who is associated with me in the conduct of this work, is a man who has been associated with me for about twenty years. He is a member of the American Institute of Accountants, and is a man whose experience in large corporate work has been quite extensive. He has been my personal assistant for many years, and I consider him amply qualified——

Mr. O'Brien: Just a minute. Your Honor, there is the objectionable feature.

The Master: I will strike out, "I consider him amply qualified". I think I will have to control this examination.

5987 By the Master:

Q. Give me the name of the next man.

A. Mr. Morean.

Q. How long has he been with you?

A. More than ten years. I do not recall exactly

Q. Give me the next name.

A. Mr. H. M. Littlejohn.

Q. How long has he been with you?

A. I should say about ten years.

Q. The next man?

A. The rest of the staff is the junior staff, th names of which I do not know, that I could ca

5988 offhand.

The Master: I think that is enough on tha

By Mr. O'Brien:

Q. You do not remember their names?

A. Well, I might; if I am given time I might r call the names of the junior staff.

The Master: Those are the men who do t copying off, in large measure?

Mr. O'Brien: Oh, they do more than th your Honor.

Q. They do that and the calculating, don't they? 5989

A. They do all kinds of work.

Q. I mean they do not direct or use judgment very much; they tabulate the figures and look into the figures that you tell them to?

A. That is exactly what they do. They do exactly what they are told to do.

Mr. O'Brien: Just exactly what they are told?

The Witness: I hope they do.

Q. Has any of this junior staff been with you for some time?

A. Some of them have been with us for some 5990
time, others for a short time.

By Mr. Ransom:

Q. Are any of them certified public accountants?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: I will allow that.

A. I think not.

The Master: He says he thinks not, so that is ended.

Mr. O'Brien: Juniors are in a probationary period and would have to get the O. K. of an employer before they are qualified.

Mr. Chambers: They are cadets. 5991

Q. How long have Littlejohn, Morean and Stumpfel been there?

A. Mr. Littlejohn has been with the company for——

The Master: Is he a certified public accountant?

The Witness: I could not say.

The Master: Is Morean?

5992 The Witness: I don't know whether he is or not. He is in the court room; you can ask him.

The Master: Is Stumpfel?

The Witness: Stumpfel is not. He is a member of the American Institute of Accountants.

Mr. O'Brien: Is that an organization, a national organization?

The Witness: It is a national organization of practicing public accountants.

Mr. O'Brien: It has not anything to do with the American Gas Institute?

5993 The Witness: Nothing whatever, so far as I know.

Mr. O'Brien: They have a branch on accountancy, that is why I asked you.

The Witness: There is no connection between the two, Mr. O'Brien.

Q. Will you describe just what examination you made of the Company's books, accounts and records, general subsidiary records, the vouchers and the method of recording the operations and business of the company?

Mr. O'Brien: Let me ask that that be made definite. We will have this word "you" used right along, and I think it might be well to have counsel state whether he means Mr. Teele personally or the firm.

5994 The Master: For the purpose of this question I am assuming that Mr. Teele and his assistants are included in the term "you". Is that correct, Judge Ransom?

Mr. Ransom: It is.

Mr. Chambers: May I have that question again? I did not hear it. 5995

(The question was then repeated by the stenographer.)

The Master: He is just telling us what he did.

Mr. O'Brien: I understood it was Mr. Teele and not the parts of the machine or firm of Patterson, Teele & Dennis.

The Master: I am going to permit the question as applicable to Patterson, Teele & Dennis.

Mr. O'Brien: Now we will understand it is Mr. Teele and staff.

The Master: Then on cross-examination you can bring out just how much he had to do with it. 5996

Mr. Ransom: I may bring that out on direct.

The Master: Or Mr. Ransom may bring it out on direct.

Q. Go ahead and tell what you did.

A. Commencing with the operating ledger, which is in two sections, we traced the entries contained therein back to the sources from which they were posted and in connection with the entries made in the posting mediums we examined the documents—— 5997

Mr. O'Brien: Will you state as you go along what that means, Mr. Teele?

The Witness: The posting mediums are the operating journal, the record of accounts payable vouchers of audit sheets, I believe it is called by the company.

Mr. O'Brien: Audit sheet?

5998 The Witness: I think they call it an audit sheet. It is the record of accounts payable vouchers.

Mr. O'Brien: Is that one of the exhibits we have had offered?

The Witness: It is in evidence. The sundry debtors blotter and the payroll distribution record, which is titled by the company, Payroll Summaries W.

The Master: Is the book that you have been talking about, a bills payable sheet, what Mr. Brundage has called a sundry creditors' book or something of the kind?

5999 The Witness: There is a sundry creditors' ledger, if that is what you have in mind.

The Master: Yes. Is that the book you mean?

The Witness: No, I mean the intermediate record.

The Master: Let us refer to it by an exhibit number.

Mr. Chambers: It would save us a lot of trouble if he tells of this list he gives what books are in evidence, starting from the beginning.

6000 The Master: I would like to identify the book that he talks of as a bills payable.

Mr. Clark: I think it is the invoices approved, your Honor.

The Master: Because I have not heard that term used before, that I remember.

Q. What was the first book that you referred to?

A. The operating journal.

The Master: Let us have that identified by an exhibit number. 6001

Mr. Ransom: The operating journal is Exhibit 191.

Mr. Chambers: A and B or what?

Mr. Ransom: No, just one.

The Master: Mr. Teele, you spoke of an operating journal. Is this the book, that I now show you (indicating)?

The Witness: This is the book.

Mr. Chambers: There are 13 of those books, too, your Honor.

The Master: Did your investigation work go to 1918? 6002

The Witness: Through 1918.

The Master: Then this book, the book you refer to as an operating journal, is complainant's exhibit 191?

The Witness: Yes, sir.

Mr. Ransom: I am now examining him as to 1918.

The Master: Exhibit No. 191 is the operating journal to which you referred as having been looked at for the year 1918?

The Witness: It is.

Q. You mentioned certain books which you called "posting mediums". 6003

A. Posting mediums.

By the Master:

Q. What books are those?

A. This operating journal is one, the record of accounts payable vouchers is another.

Q. Is the book now handed you the book you

6004 describe as the accounts payable—or what do you call it?

A. I call it a record of accounts payable vouchers, and company titles it invoices "approved by executive committee" Exhibit No. 198.

Q. Then that is Exhibit 198?

A. Yes.

Q. What else did you look at?

A. The sundry debtors' blotter, of which there are several volumes.

Mr. Ransom: There are four of them, your Honor.

6005 Q. This book is a book entitled, "Sundry Debtors' Blotters" (indicating). This only starts with No. 117. That book is Exhibit 192?

A. Yes, right.

Q. Look at the next one, Sundry Debtors' Blotter No. 47 is Exhibit No. what?

A. 193.

Q. And Sundry Debtors' Blotters No. 48 is Exhibit what?

A. 188.

Q. And Sundry Debtors' Blotter No. 49 is Exhibit what?

A. 194.

6006 Q. What else did you look at?

A. The payroll summaries.

Q. Is this the book (indicating)?

A. This is the book.

Q. And you are identifying now Exhibit No. 204?

A. Yes, sir.

Q. What else did you have? Have you got all the posting mediums, as you call them?

A. Yes, sometimes called journals. 6007

Mr. Ransom: That does not include the Sundry Creditors' Ledger.

The Witness: I am speaking now of the posting mediums.

Q. In addition to the posting mediums we have just identified, what else did you look at?

A. The Sundry Debtors' Ledger and the Sundry Creditors' Ledger.

Q. The Sundry Creditors' Ledger is what number?

A. That is Exhibit No. 195.

Q. What else did you look at?

A. The Sundry Debtors' Ledger. 6008

Mr. Chambers: We have four Sundry Debtors' Ledgers.

The Master: No, Sundry Debtors' Blotters.

Q. Is that the Sundry Debtors' Ledger (indicating)?

A. Yes, and is Exhibit No. 196.

Mr. Chambers: What is Exhibit No. 197?

Mr. Ransom: The index book.

Q. What else did you examine?

A. The Treasurer's Cash books.

Q. What are the numbers of those books?

A. Exhibit 199 and Exhibit 200. 6009

Q. Now, we have covered all of the posting mediums, have we?

A. I think we have.

By Mr. Ransom:

Q. What else did you examine beyond these books which have been now identified by you?

A. The vouchers which are listed in the Accounts Payable record, the checks used.

6010 Mr. Chambers: Was that Accounts Payable record one of these?

The Master: Yes, he calls it by a different name. It is identified in the testimony by an exhibit number.

Mr. Chambers: I see. It is the Invoices Approved.

The Master: Yes, it is the Invoices Approved.

Q. I will suggest to the witness so far as he can to use the terms which have been applied or followed by the Company and by which these different books have so far been referred to in evidence.

6011 You have examined vouchers; now, what else?

A. The checks upon which payments have been made.

Mr. O'Brien: Bank checks?

The Witness: Yes.

Mr. O'Brien: Is there a list of those in any books?

The Witness: A list of the checks?

Mr. O'Brien: Payable.

The Witness: The disbursements are all entered in the Treasurer's Cash Books.

By the Master:

6012 Q. Is there anything else you looked at?

A. The various reports of all kinds, upon which the entries made in the Operating Journal are based.

Q. Did you look at the Payrolls?

A. The Payrolls are listed in the Invoices Approved Record.

Q. Did you look at the original time books to check up the payrolls?

A. We did this with regard to payrolls: I had 6013
one of my assistants examine the procedure followed by the company in the preparation of payrolls and write out for me a complete description of the procedure followed in all of the departments, starting from the original initial record made, and then we checked and verified the footings of all payrolls paid or made up and not paid at the end of the year, and we tested the distribution of those payrolls by taking the individual time slips for two months during the year 1918, the month of January and the month of February, and making an independent computation of the dis- 6014
tribution of labor as indicated on the individual cards and comparing that with the distribution of labor as reported and shown by the payroll summary sheets for the months of January and of December. That examination covered the examination of about something over 10,000 cards in the month of December and a similar number in the month of January, 1918.

Mr. O'Brien: I thought you said the two months were January and February, Mr. Teele.

The Witness: If I did, I did not intend to say so. I intended to say the month of Decem- 6015
ber, 1918, and January, 1918. In other words, I took the two ends of the year.

Mr. Chambers: Not the two ends.

The Witness: Yes, the beginning and the end.

By Mr. Ransom:

Q. That is, you took the first month and the last month?

6016 A. The first month and the last month.

Mr. Chambers: You took the beginning and the end of the year?

The Witness: Yes.

Q. That is, with respect to labor you went back from the entries to the original time cards, the first memorandum made with respect to labor?

Mr. O'Brien: Just a minute. That is leading.

Mr. Ransom: Let him state what he did.

Mr. Chambers: Time slips, he said.

Mr. Ransom: Just let the witness state what he did with respect to these two months.

6017 Mr. Chambers: Yes, I say that, too.

A. We took the original time slips sent to the Payroll Department, which slips are endorsed as correct by the superintendent——

Mr. Chambers: No, I move to strike that out. There you get some evidence in there that is incompetent.

Mr. Ransom: Let him state what he did.

Mr. Chambers: Well, he says these are endorsed.

Mr. O'Brien: Are these in court, these papers that were examined?

6018 Mr. Chambers: They will have to be, I think.

Mr. Ransom: Let him describe his method.

The Master: We will decide what they ought to have in before we take any computations or calculations.

Mr. O'Brien: The reason I rose to object was that Mr. Ransom raised a general objection, and did not specify the grounds.

The Master: You told us, or were telling

us that you tested out the pay roll system for 6019
January and December.

Mr. Chambers: I think there ought to be stricken out there where he characterizes something about one of these papers, he said they were approved as correct.

The Master: I will strike out the statement they were approved as correct, but I will let him state that there were on those papers that he saw notations by the superintendents of those plants, without stating what they were.

Mr. O'Brien: This wasn't Mr. Teele, but the man who made the test, was it?

6020

The Master: Mr. Teele may have seen them himself, so far as I know. I don't know.

Mr. O'Brien: He has not so testified yet.

The Master: Not yet, no.

Q. Will you proceed and state what was done by you or under your direction, so far as these two months on which you went back to the time slips?

A. These individual time slips which indicate on their face the account to be charged and the amount to be charged for the pay represented for the time slips, were separately compiled by us in order to aggregate the total amount during the month to be charged to the respective accounts.

6021

The Master: But, of course in doing that you relied upon what you found upon the time slip itself?

The Witness: We did, these slips being——

The Master: You did not go back to the original time book that they keep at these plants, did you?

The Witness: We did not.

6022 Q. Proceed, and say what was done?

A. The distribution of the time for the two months of January and December were then compared with the distribution of time as shown by the pay roll summaries for those months which had been compiled in the pay roll department by what is known as the Hollerith system, which is a mechanical means of compiling records, in order to satisfy myself as to the accuracy of the work done in that department I tested these two months.

Mr. O'Brien: Will the stenographer read the latter part of that answer.

6023 (Portion of the answer referred to was read by the stenographer.)

Mr. O'Brien: We are approaching an expression of a conclusion, I think.

The Master: No, he is simply saying for a purpose which he has stated, he did something. Now, what did you do?

The Witness: I have stated that.

The Master: You mean you tested them during these two months as already testified?

The Witness: Yes.

Mr. Chambers: I think to satisfy himself, it is improper for him to state, he may state what

6024 he did do.

The Master: Well, he was just adding to what he had already said that he did this work for the purpose of testing these things.

Mr. O'Brien: It is obvious that it was his purpose, he was not there to spend time, he was to determine the accuracy. He doesn't need to say that.

The Master: Well, it don't do any harm. Go ahead.

Q. Now, will you describe from your recollec- 6025
tion——

The Master: Will you let me interrupt you, Mr. Ransom. How much did you have to do with this work yourself?

The Witness: With the actual compiling?

The Master: With the actual—how much did you see of the work that was done by your men in this regard? Did you take any part in it at all?

The Witness: I took this part in it, that I went into the pay roll department to see exactly what cards were kept there and how 6026
they were kept and made a demand upon them to turn over to me the cards supporting the pay rolls for the months of January and December, taking them independently; then I looked at the cards to see how they were marked, and I then decided upon what was to be done, and gave instructions as to what was to be done and watched the work being done by my assistants from day to day.

Q. And you were personally present?

A. I was present not all of the time, but enough so as to direct the work, to deal with any conditions or any questions that might arise while the work 6027
was under way.

The Master: Did you see or handle these cards?

The Witness: I did.

The Master: Did you see them taking matter off the cards?

The Witness: They were taking matter off

6028 under my instructions, and following my directions.

The Master: What I mean is, you saw them transcribing matters from the cards to their own work sheets?

The Witness: I did.

The Master: You did not go over their records and check up the figures themselves?

The Witness: It was not necessary, in my opinion.

The Master: Well, did you? I want to bring out the fact.

The Witness: I did not.

6029 Mr. O'Brien: I move to strike it out, your Honor, it was not necessary.

The Master: What is the use striking it out? I will strike it out, if you want it.

Mr. Ransom: I object to its being stricken out. The witness is an expert on methods of audits.

The Master: Go ahead.

The Witness: In addition to this, we compared the total distribution of cost, as made by the—as shown by the pay roll summaries each month with the total amount of the pay roll

6030 made up and paid by the company, so that—

The Master: So that you want me to understand two things, one that you and your men checked up the amount paid for labor during January and December with the cards showing the time spent by each laborer or workman, and second, that the distribution of the various accounts tallied with the distribution in the books of the company?

The Witness: It did, with minor variations. 6031

The Master: What do you mean by minor variations?

The Witness: I mean that errors are made in the pay roll department in abstracting for the purposes of the Hollerith system, that is, in punching the cards they make minor errors.

The Master: And those errors turned up in your inspection?

The Witness: Those errors turned up in my inspection of those two points.

Q. Have you been personally present at the company's offices day by day on this work? 6 32

The Master: He has testified for the first two months about half the time, and after that almost all the time.

Mr. O'Brien: Part of the time, as I recall it, your Honor.

The Master: I think he said about half the time.

The Witness: About half the time the first two months, and the rest practically all of the time.

Q. Will you just describe your relationship to the work that was going on by those men, or on the part of these men around you and what part you personally took in the work? 6032

A. You mean with regard to this pay roll work alone, or with regard to the rest of the work?

Q. Well, with respect to that and with respect to the rest of it?

A. With regard to this pay roll work, having looked up the cards and having investigated the method by which the time was kept and the pay

6034 rolls made up and the pay rolls paid, I directed how the computations should be made for me, in order to summarize the amounts charged against the respective accounts, or to be charged against the respective accounts as shown on these individual time slips.

Q. You directed the work?

A. I did direct the work.

Q. You saw the original records and vouchers from which tabulations were being made up?

Mr. O'Brien: I object to the question, your Honor, as leading. The counsel is using the word "original" here in application to these
6035 pay roll tickets. Now, they are not the original record.

Mr. Ransom: I will strike out the word "original".

Mr. O'Brien: The time books are the original record.

Mr. Ransom: Well, that is a question of——

Mr. O'Brien: Of the time spent.

Q. You saw these vouchers?

Mr. O'Brien: Your Honor will recall this morning that the record shows not only the original record, but it spells out in words the
6036 character of the work done, where the weekly reports turned in on these time slips put down a number of an account.

Q. You saw the vouchers and other documents from which records are being made up, did you?

A. I had them examined personally or under my instructions my assistants examined every voucher listed on the approved invoice record for the year 1918.

Q. You personally saw the work when it was made up and passed upon? 6037

A. I did.

Q. Can you describe from your recollection, in detail just what you did with respect to the examination of other books, accounts and vouchers supporting the entries in the books which you have described; for example, with respect to material invoices and the like?

A. Material invoices for the year 1918, are, of course, all listed in the approved invoice record, and those invoices were examined in connection with the verification of that record. They were examined again in compiling the necessary information to substantiate the distribution of the materials and supplies used by the company throughout the year. That is to say with regard to the invoices for coal delivered to the company during the year, we took the individual coal invoices and set them down upon a sheet, showing the date of the invoice and from whom purchased and the tonnage billed and the tonnage reported as received and the amount of the invoice and calculated the total quantity—the total tonnage received by the company during the year 1918, and the total amount of coal to be accounted for by the company. 6038 6039

Q. So far as material invoices for 1918, the book entries were checked against the original invoices?

A. So far as the book entries were concerned—so far as the original book entries were concerned, putting the invoices to the credit of the creditors' account, or putting them to the debit of the coal purchased account, or other supply accounts concerned we examined the original papers, and then

6040 by compilation arrived at the quantities of coal which were used or had to be accounted for by the company, taking into account the inventories at both ends of the year.

Q. So far as other materials——

The Master: Does that apply throughout the entire year?

The Witness: That applies throughout the entire year, yes.

The Master: In other words, you checked the pay roll for only two months, but the invoices for material for the whole year?

6041 The Witness: We checked all of the pay rolls for every month in the year. We checked the distribution of the pay rolls for the two months of January and February, on account of the volume of work, and what I considered was sufficient test, we only tested that total distribution for two months.

The Master: How about distribution of materials?

The Witness: So far as the material invoices were concerned, we examined every invoice and every voucher for the year 1918, and then made a compilation of the materials and

6042 supplies based upon those invoices.

Q. And checking with respect to the original entries?

A. Checking with respect to the original entries.

Q. How about cash disbursements?

Mr. O'Brien: I move to strike out, your Honor, the question and answer, "checking with the original entries".

The Master: Motion denied.

Mr. O'Brien: That carries with it the assumption that the sundry debtor ledger, or the other books offered in evidence, is an original record. 6043

The Master: No, no more than the evidence discloses it to be, if it is. His statement, "checked with the original entries" does not mean any more than the books. I will allow it.

Q. As far as cash disbursements are concerned, what was done as to the vouchers for cash payments and the checking of them?

The Master: Do you mean petty cash? 6044

Mr. Ransom: No, beyond that.

A. Payments records in the treasurer's cash book were checked against the invoices recorded on the approved invoice record, so that taking the evidence of payment and the form of the checks used by the treasurer in making the payment, and the invoices recorded on the approved invoice sheet, we had what we considered to be evidence of payment for the merchandise or service for which the company incurred an obligation during the year 1918.

Q. And that was done in each instance so far as 1918 was concerned? 6045

A. It was.

Q. The Master has asked about petty cash. What was done in that respect?

A. Petty cash vouchers are included in the list of approved invoices.

Q. And they were similarly checked, examined and checked?

6046 A. They were similarly checked, examined and checked.

Q. Now, did you examine the documents and vouchers that commenced beyond the payment of bills and expenditures, that is, with regard to the record indicating the receipt of materials and the use of materials? If so just what did you do in that respect?

A. In the examination of the material invoices we paid attention of course to the endorsed receipt vouchers, so-called, or receipt certificate which is attached to the material invoice.

6047 Q. The use and the receipt is indicated on the voucher or in connection with it?

A. The use or destination is indicated upon that voucher.

Q. Did you examine these vouchers with respect to seeing that the book entries conformed to the entries contained on the vouchers in this respect?

A. We did.

Q. Would you say that you went completely through the accounting system of the company for the year 1918?

Mr. O'Brien: I object to that, your Honor.

The Master: Objection sustained.

6048 Q. Will you state anything further as to the examination and the extent and completeness of the examination which you made?

Mr. O'Brien: We object to that.

Mr. Chambers: We object. It is for the Court to say how complete it was.

Mr. Ransom: Let him describe it.

By the Master:

Q. Was there anything further that you did with

reference to checking up these vouchers and rec- 6049
ords except what you have testified to, that you now recall?

A. I visited the manufacturing work for the purpose of seeing how the reports which were made by the manufacturing work were compiled, what records were made at the point at which these reports were initiated, and how the matter contained in them was reported, and how the facts as shown there were obtained at the manufacturing station.

Q. Illustrate what you have just said by some concrete example.

A. I saw how the coal was weighed, first how the 6050
coal was received, and their method of recording it.

Q. What is their method of recording it?

A. Their record of recording it is to weigh it—speaking of the 99th Street station, the coal is weighed as it is hauled from the dock either to a generator house or to the inside stock pile where it is shoveled into the cars which take it up and dump it into the generators; the cars themselves are weighed and a record is made upon a sheet kept upon the generator floor, showing either the exact weight of the car, or the weight that is used. My recollection is that at 99th Street they adopt a standard weight for a loaded car. That is, the cars 6051
sent to the floor, and as they are used they note the weight upon a sheet, and those sheets are in two parts. They run from eight o'clock in the morning until 8 o'clock at night, I believe for one sheet, and from eight o'clock at night until eight o'clock in the morning for the other sheet.

Mr. O'Brien: Do you mean the sheet kept by that octogenarian that I spoke of?

6052 Mr. Ransom: I object to the question as the interruption of counsel. He will have his turn when it comes.

Mr. O'Brien: Well, we might have that now. You mean the little old man in the shed?

Mr. Ransom: I object to the interruption of counsel. It is part of his habitual course in this case.

By the Master:

Q. Did you compare these items on the sheet with any of the reports made?

A. I did not. I saw the method followed in mak-
6053 ing the original records, and how those sheets were taken in to the works first and recorded there by the clerk day by day.

Q. Now, I want to get clear on the record two points at this time, with reference to the time reported on the time cards which come to the accounting department, you made no comparison of them with the original time book kept at the works?

A. I felt satisfied——

Mr. O'Brien: Just a minute.

The Master: Just answer the question.

Q. With reference to the delivery of coal you did not compare or test any of the reports made
6054 with the original delivery sheets at the plant?

A. I did not. I cared nothing about it. I had proof of it——

Mr. O'Brien: Just a minute. I move to strike that out.

The Master: Strike it out.

By Mr. Ransom:

Q. What other method did you follow in proving or checking that, as approving the coal?

Mr. O'Brien: I object to that. The question implies that there was one method tried of

proving the coal, and the witness says he did 6055
not prove it.

Q. What did you do in that respect?

A. I took the manufacturing report signed by the superintendent at the station, endorsed "correct"——

Mr. Chambers: I object and move to strike that out.

The Master: I will let it stand.

Mr. Chambers: It is not here. It is secondary and heresay.

Mr. O'Brien: It is just reporting orally what we wanted brought in and this test made 6056
here.

The Master: Let us understand it. I am not going to bring these things in. I may direct this witness before I take the tabulation, that he shall check the time cards with the time books for odd periods; and I may direct him to test the reports made of material received with the original sheets that are there, but I am not going to order them brought in here.

Mr. O'Brien: I thought your Honor was holding that matter in abeyance.

The Master: I am holding it in abeyance for this purpose; that is, a tabulation is of- 6057
fered, I am inclined to say I will not take it until Mr. Teele does some more work on it. Then I may take it as a tabulation based upon the work as to all of these original sheets and time cards and time books. That is what I am inclined to do.

Mr. Chambers: Your Honor is not going to

6058 take a tabulation unless they bring in the papers on which it is made?

The Master: I think I will.

Mr. Chambers: With all due despect, never in God's world was a tabulation taken without the underlying date.

The Master: It is obvious that I am not going to satisfy either side, and what I am going to try to do is to satisfy my own conscience and this record, as I see it.

Q. Will you state what was done, or what method was pursued with respect to the coal?

6059 The Master: He said he took the report signed by the superintendent at the station.

A. Which report was endorsed "correct", and signed by the superintendent.

By the Master:

Q. That paper to which you have just referred, in turn relates back to the original delivery sheet; it is based on that isn't it?

A. It is made from the manufacturing record kept at the station, which in turn is based upon the individual record made by the workmen making the report to the superintendent.

Q. You did not go back to the first item of any

6060 possible kind of record?

A. I did not go back of the time reports made by the superintendent, other than to see how the records were made, so that I might consider how far they were reliable in my opinion.

The Master: Now we have it perfectly clear as to what the witness did, and I have indicated what I think he should do. Let us go ahead.

By Mr. Ransom: 6061

Q. Now, Mr. Teele, are you familiar with the uniform system of accounts prescribed by the Public Service Commission?

Mr. O'Brien: I object to that.

The Master: Objection sustained.

Mr. Ransom: Upon what grounds?

The Master: Because I do not think it is material at this time.

Mr. Ransom: I am passing to another phase of the case for the moment.

The Master: What is the point of your inquiry?

6062

Mr. Ransom: I wish to develop the fact with respect to the conformance——

The Master: Of the general books of account?

Mr. Ransom: Of the accounting system.

Mr. O'Brien: Your Honor, right here we are going to meet that situation I have been objecting to right along. The question of conformance calls for a conclusion.

Mr. Ransom: I have not asked him whether they conform.

Mr. O'Brien: There isn't any integrity given to these records because they keep them in that form.

6063

The Master: I disagree with you there. I have already ruled.

Mr. O'Brien: I can't do anything but state my objection and take an exception.

The Master: That is what I want you to do. I am going to let him inquire along this line far enough to bring out what I deem to

6064 be a conclusion of facts; that these books are in the form, or are kept in the manner directed by these rules.

By the Master:

Q. Are you familiar with the uniform system of accounts?

A. I cannot say that I am familiar with it. I have read it, and I think I understand the principles of it. I have not studied it in detail to inform myself to the extent of saying that I am familiar with it.

By Mr. O'Brien:

6065 Q. You would not approve of it anyway, would you, Mr. Teele?

The Master: No, I will not permit that.

Q. Mr. Teele, give us your inside view.

The Master: I will not permit. You must not interrupt again.

By Mr. Ransom:

Q. Have you made any comparison of the books and accounts of the Consolidated Gas Company examined by you with the requirements of the uniform system of accounts, to ascertain the extent of the conformance of the books of account of the complainant with the requirements of the uniform

6066 system of accounts?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained. The witness has already testified that he is not qualified to answer that question.

Mr. Ransom: I do not think he has so testified.

The Master: I will sustain that.

Mr. Ransom: Exception.

Q. Was such a comparison or examination of the 6067
books and accounts of this company with the uniform system of accounts made by your staff under your direction?

Mr. O'Brien: I make the same objection.

The Master: I will allow that.

Mr. O'Brien: Just a minute now. Will you let me argue that? Was there a comparison made between the books——

The Master: Now, Mr. O'Brien, I am going to protect you. I know your point. I am going to allow this one question, was a comparison made, as Judge Ransom has asked? 6068

A. It was.

Q. By you or under your direction by your staff?

Mr. O'Brien: I make the same objection.

The Master: I will allow it.

A. It was.

Q. Will you state the result of such an examination?

Mr. Chambers: To that I object as incompetent, irrelevant and immaterial.

The Master: Objection sustained, because I do not think this witness is qualified to answer.

Q. In the course of your examination of the 6069
books and accounts of the complainant, did you find various printed forms and devices used by the complainant for recording the various transactions of its business?

A. Yes, sir.

Mr. O'Brien: That has been testified to, your Honor. Whether he found them or not does not matter.

The Master: He has answered it. Of course, he found them; everybody knows that.

6070 Q. Have you examined those forms?

Mr. O'Brien: Same objection.

The Master: Same ruling.

A. I examined what was on the forms, yes.

Q. And you examined the forms?

A. Yes.

Q. What would you say as to whether these forms are adapted to recording correctly the transactions in the complainant company's business?

Mr. O'Brien: Just a minute; that I must object to.

Mr. Ransom: We are entitled to prove the regularity of this system?

6071 Mr. O'Brien: It is a simple form; it will speak for itself.

The Master: I will permit the witness as a qualified accountant to state whether, assuming the correct original entries of time used and materials received, the forms adopted and used by the gas company, carry that information from these original vouchers into their books of account, whether that was a proper system for this business.

Mr. O'Brien: Just a minute. I think that is stretching expert testimony a little far.

6072 Mr. Ransom: May I just say a word on that

The Master: Not until Mr. O'Brien through? I am giving you the floor, M O'Brien, and the other gentlemen will ha the same right.

Mr. O'Brien: I think it is stretching it t far. We have several little form sheets, a it is like a blank sheet of paper. It has a ma name when it is filled in and the job he is

and the work he does, and perhaps $2.75 a day 6073
for his labor. Can you add anything to that fact and the use of that by asking an accountant skilled by experience, or unskilled, as the case may be, to say that that is a very fine system? Doesn't it speak for itself? Isn't it in here, and isn't it in use, and won't that be proved by facts and not by the comment of the witness? Not only that, but you are asking him here incidentally to pass upon the integrity and the reliability of the Hollerith system, and that is going pretty far, because sometimes the Hollerith system will replace 6074
accountants, there won't be any accountants left to do this work. It will be all done by machines, like our voting machines and others.

The Master: To some extent the witness has already indicated that the Hollerith system has its own imperfections, too. He found some errors in it.

Mr. O'Brien: I think we are going pretty far. It is just like asking the witness to say that the system of bookkeeping is waterproof and foolproof and errorproof, and that it is infallible.

The Master: No, he does not say it is in- 6075
fallible.

Mr. O'Brien: He has got to prove that.

The Master: He does not say this system is infallible. I am simply asking him perhaps modifying a little bit Judge Ransom's question, as to whether these various forms are suitable for the proper recording and carrying

6076 into other books the information and necessary data of this company.

Mr. O'Brien: Now, I object again, because of its vagueness, your Honor. There are many things which are the media of transferring into these final repositories here these figures. For instance many of them come in through that machine or plant called the journal, the operating journal, and they are based upon reports in forms; not the simple form of recording the poor laborer's $2.75, but they report big sums of money that come into that machine and are distributed. Now, you are asking him 6077 to speak upon the infallibility of that system.

The Master: Not the infallibility at all.

Mr. O'Brien: I think the question should be definite and if counsel is going to refer to the things that the witness is asked now to give a clean bill of health to, he ought to mention just what those forms are and let us see whether they include also the bases for payments through Mr. Carter's office of these payments specially O.K'd by the president—whether it includes also the journalized amounts in the operating journal. If you exclude them we 6078 get down to a simple question.

The Master: You have stated your objection, Mr. O'Brien; I have ruled upon it. I am going to allow this question as I have modified it. Answer the question.

Mr. O'Brien: Does your Honor include in your question anything more than the printed forms?

The Master: That is all.

The Witness: May I have the question read? 6079

The Master: I will repeat the question to save time. You have seen these forms of various kinds that are used for the time of labor and receipt of merchandise and matters of that kind?

The Witness: I have.

The Master: Are they suitable for the conduct of this business?

The Witness: I believe they are well designed to make a proper record of the transactions reported upon.

The Master: They are not infallible?

The Witness: Nothing is infallible. 6080

The Master: They depend upon the human element of the men who make the entries?

The Witness: They do.

Mr. O'Brien: Could I ask a question at this point, your Honor?

The Master: No, make a note of it in your memorandum book.

Mr. O'Brien: It would be so appropriately put just now.

The Master: No, the most appropriate time is when it comes to your cross-examination. Make a memorandum of it in your book. Next question. 9081

By Mr. Ransom:

Q. Mr. Teele, in the course of your experience have you from time to time devised or formulated a system of accounts for various industries?

Mr. O'Brien: Your Honor, I think that is objectionable.

The Master: I think I will allow him to an-

6082 swer that question, has he installed such systems.

Mr. O'Brien: It is hard to ask the witness if he has been the father of another uniform system.

Mr. Ransom: Not uniform system, but suitable system.

The Master: I will let him answer if he has installed system of accounts.

Mr. Ransom: I said devised, formulated systems of accounts.

The Master: Have you devised, formulated or installed systems of account?

6083 The Witness: I have.

The Master: And I suppose they vary upon the varying kinds of conditions you meet in various kinds of business?

The Witness: They do.

Q. For the purpose of securing a correct record of revenues and expenses?

The Master: Certainly; that is what they are for.

Q. Have you investigated the accounts and records of the complainant company to ascertain whether the complainant's system is so designed

6084 and kept as to reflect correctly the revenues and expenses of the company?

Mr. O'Brien: That is just like asking a final O. K. of their books, your Honor.

Mr. Chambers: I object to that.

The Master: I am going to let him do this and this is all I will let him do——

Mr. O'Brien: The books are here; they will speak for themselves, your Honor.

The Master: Mr. Teele, Judge Ransom asks you, as I understand it, as an expert whether you like this set of books, whether you think it is a good set of books. 6085

Mr. Ransom: That is not what I asked him.

The Master: That is about all you can ask him.

Mr. Ransom: May I just say a word, your Honor. This is a phase of the case to which considerable importance has been attached in a number of these rate cases which have gone before the Court. These questions which I have asked have each of them been questions which have usually been allowed over objection in those cases, where the matter—— 6086

The Master: All you can ask, Judge Ransom, is this witness's expert opinion as to whether this set of books is designed to meet the conditions of this company's business for the purpose of having an accurate record. That is all you can do. You can only ask him for an opinion.

Mr. Ransom: I will ask this question: "Whether these accounts and records and the system of this company is so designed and kept as to reflect correctly the revenues and expenditures of the company"? 6087

The Master: I will not permit the question in that form. I will permit a question whether in his opinion as an expert, the books are so designed that if the entries are correctly made and they are properly kept, they will reflect correctly the business of this company?

Mr. Chambers: To that I object, unless the question is confined to the books in evidence.

6088 Mr. Ransom: I am referring to the accounting system.

Mr. Chambers: Well, now, that is my objection, he is referring to something that we know nothing about, and never will. If he confines—if the Master confines the question to the papers in evidence, that will remove part of my objection.

The Master: Yes, I think that ought to be done.

Mr. O'Brien: If it is not, your Honor, we will have to have the records in here anyway, the door is opened for the bales of hay they
6089 speak about, and other things.

The Master: I think the question should be limited in two respects; one, to these books in evidence for the year 1918, which this witness says he has worked on and with which he is familiar——

Mr. Ransom: And the other data which he has examined?

The Master: Everything relating to it which he has examined, whether the complete bookkeeping system that he found in use, as reflected in these books and supporting records
6090 and reports, is designed to accomplish the result of having an accurate record, depending always upon the entries being accurately and properly made. You will have to have that in the question. I can prove my statement in a minute. Mr. Teele, will the finest set of books in the world, the most wonderfully designed set of books in the world, be of any use, unless the entries are properly made?

The Witness: They will not. 6091

The Master: So that all you or any other expert could say was that these books are designed to create an accurate record, if the entries are properly made?

The Witness: Quite right.

The Master: And that is all you can say about these books for 1918?

The Witness: Yes.

The Master: And this system of accounting for the Consolidated Gas Company, they are designed for that, and you as an expert would say that the person who designed them had 6092
done a job which will accomplish that result, if the men who do the work do it right.

Mr. O'Brien: I note an objection to that.

The Witness: I won't go as far as that.

The Master: How far will you go?

The Witness: I will go to the extent of saying from my examination of them, and the records made, that I believe they accurately and correctly represent truthfully the results of the transactions of the company.

Mr. O'Brien: I move that answer be stricken out.

The Master: That answer will be stricken 6093
out.

Mr. Ransom: I will except to its being stricken out.

The Master: The inquiry now relates solely to the plant designed. Does it tend to an accurate record of the company's business?

The Witness: It does.

6094 Q. And is it suitable to secure that?

Mr. O'Brien: That is back to the old objectionable ground.

The Master: That is allowed and exception to the defendants. Is it suitable for that purpose?

The Witness: Yes, sir.

Mr. Chambers: That was with an objection and exception, of course?

The Master: Yes.

Q. Have you made a sufficient examination and investigation of these books and underlying records
6095 to enable you to say whether in your judgment the accounts of the company are kept accurately?

Mr. Chambers: That is objected to as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. Ransom: I have just read a question allowed by Judge Sloane in the Des Moines Gas case.

The Master: I wouldn't care if it was allowed by every judge in the United States, I would not allow it.

Mr. O'Brien: Sloane's Liniment.

Mr. Ransom: I only thought your Honor
6096 might want to have authorities.

Mr. Chambers: It was not objected to in that case.

Mr. Ransom: It was objected to.

The Master: I have the least respect for authority, perhaps, of any man in town.

Mr. O'Brien: You have two or three with you on that.

Mr. Chambers: I would not give a cent for 6097
precedence.

Mr. Ransom: Evidently not. I except to the ruling of the Court.

The Master: The thing is either logical and right, according to my construction of the law, or it is not. The fact that some other judge said it is not, does not make any difference to me.

Mr. O'Brien: You will have to have the whole record before you too.

The Master: In all fairness to counsel for the complainant, I want to amplify what I 6098
have already indicated, that if you expect to prove by Mr. Teele these records as an accurate statement of what is contained in all of the supporting records, or you expect to prove a statement prepared by him from these books and all the supporting records, I won't take it unless Mr. Teele goes back to the very first items which support everything that he knows about, and if he does that, I will, in my judgment, at this time——

Mr. Ransom: (Interrupting.) I necessarily object to your Honor's ruling, and except to it 6099
because it goes to a point which no court anywhere in Christendom has ever held in a rate case.

The Master: You want to get your case in, don't you?

Mr. Ransom: Yes.

The Master: You want your case in so I will make a finding dependent upon the facts I can find.

6100 Mr. Ransom: Yes, but I don't want you to write the death sentence of this company at 5 o'clock on this day, and that is what you are really doing now.

The Master: It is no death sentence at all. Mr. Teele can give you anything with two or three men, he can take the month of December.

Mr. Ransom: That cannot be done in eight months.

The Master: What?

Mr. Ransom: What you have just directed.

The Master: What have I just directed?

6101 Mr. Ransom: That every one of these, for instance, labor vouchers, must be checked back from the time book.

The Master: I did not say anything of the sort. I said I want him to take a period of time, just as he took January and December, and if counsel for the defense have any preference or will indicate what months they want I will do that, so that we can find out whether this is right. I am going to insist upon Mr. Teele going back to the original time book and comparing that time book with some of the time sheets that came in, not all of them, but

6102 enough of them to make it clear upon the record that the probabilities are that they are all accurately kept.

Mr. Ransom: That is what he has already done.

The Master: He has not, he has not taken the time book and he has not taken the original delivery sheets.

Mr. Ransom: As I understand the situation, there has been typical vouchers, under all of

these classes of items, selected at random in 6103
these different months, to check right through.

The Master: Why argue it, and why be misled.

Mr. Ransom: I am not misled, your Honor is misled.

The Master: Mr. Teele, am I not correct in my understanding of the situation, that you felt that you had justified a certificate to the accuracy of these books, stopping short of the examination of the time books to make sure that the time sheets sent in were correct?

The Witness: Yes. I took the sheets that were signed by the men who had authority and 6104
direction over the labor, over the labor itself.

The Master: I know that, but you stopped short of looking at the time book which was the contemporary record, didn't you?

The Witness: I did.

The Master: And you also stopped short of checking it to any extent with the original sheets showing the receipt of coal, and other material, didn't you?

The Witness: No.

The Master: Did you take the original delivery sheets?

6105

The Witness: All invoices bear—they have attached to them a certificate signed by the man who received the material.

The Master: Yes, but there is a contemporary record kept by the man who receives the material for the receipt of the material, isn't that so?

The Witness: So far as coal is concerned, and so far as oil is concerned.

The Master: Those are the only ones?

6106 The Witness: Yes, sir.

The Master: Now, how long would it take you to pick out five or six of these throughout the year, and compare the time book with the time sheets for that period; and the invoices for material with the coal and oil received as appearing on those invoices for a period of six weeks spread over a year? Would it take more than a day?

The Witness: Yes.

The Master: Two days?

The Witness: If you want to take some particular station, we can probably make a test
6107 of the individual time cards at that station with the original time books in a very few days.

The Master: Could you take one day in each of three weeks at the various stations and finish that in several days?

The Witness: If you will allow me to suggest, if you want to make a test of it, you will make a more satisfactory test by taking a complete station for a limited time, rather than taking one day here and one day there, because unless you take a complete month you cannot
6108 fit it up with the payroll itself.

The Master: Well, how long would that take?

The Witness: As I say, that might take a single month for one of the stations, and check it up in a very few days.

The Master: Of course you can, and then we have got such proof that I would be willing to make a finding on. I believe that it is my duty to point out to you now that I think that

these exhibits that I have received in evidence more in the nature of tabulations, they are, than original books of entry, although I think they are likewise, as I have already indicated, in the light of some of the more recent decisions, books of original entry in a sense, I think they ought to be supported by the testimony of Mr. Teele that he has done all that he has testified he did, and just a little bit more, namely, that he has checked the bills for goods charged with the contemporaneous record made at the time, showing that they came in, and further that he has checked the time cards certified by the superintendents sufficiently to make sure that the superintendents' O. K. is to be relied upon with the time book itself, then you have a complete record. 6109 6110

Mr. Ransom: Your Honor, I have no objection to the principle laid down here by your Honor at all, but I am afraid you have slightly misapprehended just what the situation is. For example, with respect to the receipt of coal, what better evidence could there be than the receipt, or a copy of the receipt as made out by the man at the time, who received it.

The Master: But the endorsement on the voucher is not the thing made by the man at the time that he received it. We have got no—— 6111

Mr. Ransom: That is just the point. When you have a voucher with respect to coal, do you have anything that is made by the man at the time, indicating the receipt?

The Witness: The man who receives the coal at the station writes out a receipt, fills

6112 out a form provided by the company and reports to the company's general office that he has received a certain weight of coal.

By the Master:

Q. Is that made at that time?

A. According to the bill of lading.

Q. Didn't I understand that when coal comes in it is weighed, and there is a sheet of some kind on which the man at that time makes an entry?

A. Yes, but as he compiles or makes his own memorandum only to arrive at the amount which he reports to the general office as having received.

6113 Q. Yes, but he arrives at——

A. He states his conclusion as to what he has received.

Q. He makes an entry in his own handwriting in a sheet that he keeps at the time that he gets it?

A. Yes.

Q. And the report he makes is based on that?

A. But he counts what he receives and weighs it, and then issues the receipt for it.

Mr. Ransom: He makes a receipt at the time for so much coal, and that receipt which is made at the time is clearly the best evidence.

Mr. O'Brien: It is not.

6114 The Master: Now, Judge Ransom, I can't say anything more to make myself clear to you as to my conception of the situation and as to the condition of the proof. Now, if you don't want Mr. Teele to do what I suggest, you, of course, don't have to do it.

Adjourned until August 21, 1919, at ten A. M.

Last Complainant's Exhibit 204.
Last Defendant's Exhibit U.